

questioned the jurisdiction of this court. I have heretofore decided this point adversely to the plaintiffs, for reasons not now necessary to reiterate. But now, although counsel on both sides have in argument supported the contrary view, I am of the opinion that the court has no jurisdiction of the case, there being no ground of jurisdiction shown other than the diverse citizenship of the parties. My reasons for this decision are stated in the opinion just filed in the case of *Nickerson v. Crook*, ante, 658.

Let an order be entered upon the court's own motion, remanding the case to the superior court of Pierce county.

CHADBOURN *et al.* v. COE *et al.*

(Circuit Court, D. Minnesota, Third Division. May 4, 1891.)

FRAUDULENT CONVEYANCES—PARTIES.

A bill in equity against a trustee to subject property alleged to have been fraudulently conveyed to him cannot be sustained when the debtor is not a party, and complainant has no judgment against him, but merely alleges indebtedness upon promissory notes.

In Equity. Demurrer to bill, for defect of parties.

In September, 1889, Reuben W. Chadbourn, now deceased, filed his bill in equity in this court against Orlen P. Whitcomb and James N. Coe. After the death of Reuben W. Chadbourn the action was revived in the name of the complainants herein. The said Reuben W. Chadbourn was at the time of the filing of the bill, and the present complainants now are, residents and citizens of the state of Wisconsin. The defendant Coe is a resident and citizen of the state of Minnesota, and the said Orlen P. Whitcomb is a resident and citizen of the state of Colorado. Whitcomb filed a plea in abatement, alleging that he was at the time of the filing of said bill, and now is, a citizen of the state of Colorado, and alleging that this court had no jurisdiction over his person or the subject-matter. Said plea has been sustained by this court, and Whitcomb is out of the case.

The bill alleges that Orlen P. Whitcomb is indebted to the complainants in a sum exceeding \$5,000, exclusive of costs, and that the debt is evidenced by Whitcomb's three promissory notes. No judgment has been obtained against Whitcomb. It is alleged that Whitcomb is insolvent, and has been so since 1875; that since about 1883 he has been a resident and citizen of the state of Colorado, and absent from the state of Minnesota; that complainants cannot procure a judgment against him in any action at law in the courts of the state of Minnesota, or in the United States circuit court of said state of Minnesota, to collect said notes; that jurisdiction cannot be had by the service of process on Whitcomb in any action at law in said courts to collect said notes or to pro-

cure a judgment thereon; that Whitcomb has no property in the state of Colorado, where he resides, or in the state of Wisconsin, where the complainants reside, or in any other state or territory, as complainants are informed and believe, out of which the complainants can collect their debt, except the property described in the bill; which property, both personal and real, the complainants allege Whitcomb transferred to defendant Coe with intent to hinder and delay and defraud his creditors; that complainants are without remedy at law to collect the debt; that the property so transferred to Coe was of the value of several thousand dollars in excess of the incumbrances thereon; that the property was taken by Coe with intent to delay and defraud the creditors of said Whitcomb, and especially the complainants; that Coe paid no consideration for the property at the time of the conveyance, except a nominal amount of one dollar, and that he executed at the time of the conveyance of the property a certain secret trust agreement to Whitcomb, a copy of which is set forth in the bill; that the purpose of the transfer to Coe was to prevent the complainants and other creditors from collecting debts, and to enable the said Whitcomb to manage, control, dispose of, and handle said property for his own use and benefit, free from claims of creditors, and particularly from these complainants; and that Whitcomb has, until about the year 1887, received the proceeds and crops from the real estate, and has sold a portion of the real estate; and that said trust agreement was never recorded. Said trust agreement, omitting the description of the property, is as follows:

“Know all men by these presents that I, James N. Coe, of the city of Rochester, in the county of Olmsted and state of Minnesota, for and in consideration of the conveyance to me by Orlen P. Whitcomb of said city of Rochester of the following described real estate situated in the county of Olmsted and state of Minnesota, and known and designated as follows, to-wit, * * * do hereby covenant and agree, for myself and my heirs to and with the said Whitcomb, his heirs and assigns, to hold said premises in trust for the said Whitcomb for the following purposes, viz.: To convey said real estate, or any part or portion thereof, to such person or persons, and for such prices, as the said Whitcomb shall direct; and I hereby agree to make all such conveyances on request, and out of the proceeds of the sale of and for said real estate to pay to the creditors of said Whitcomb such proportion thereof as he shall direct, and to account to and with the said Whitcomb on demand, for and on account of all moneys or securities received on said sales, less any taxes or expenses incurred in the premises; and I further covenant that I will not convey said real estate, or any part thereof, except as requested by said Whitcomb; and in consideration of the premises and one dollar to me in hand paid by said Whitcomb, the receipt whereof is hereby acknowledged, I hereby covenant and agree for myself and my heirs to and with the said Whitcomb, his heirs and assigns, to convey upon demand to said Whitcomb, his heirs or assigns, by good and sufficient deed, all of the real estate hereinbefore described, except such as shall have been conveyed by his request, upon being paid the expense of executing said deed, and upon being paid all taxes and expenses, if any, incurred in the premises.”

There is also an agreement set forth in the bill by which Orlen P. Whitcomb transfers to said defendant Coe his personal property, consisting of stock, farm implements, etc., with power of attorney to man-