was permitted to manage and control the property conveyed, and to receive the rents, was a circumstance needing explanation. But the evidence is clear that no such agreement preceded the deed. Pending an advantageous sale, Hanner, by a subsequent agreement, permitted the grantor to collect the rents and look after the property, the latter agreeing to keep down the interest on the debts and keep the property insured and in repair by applying the rents to these objects. This seems to have been a purely business arrangement, and applied only so long as suited the wishes of both, and was not objectionable to the creditors interested. The proceeds of the sale of the storehouse sold to the Misses Vaughn were applied to the payment of such of the debts as were most pressing. The remaining property was conditionally sold to the defendant Roberts, but has not yet been confirmed.

The chief attack upon the conveyance, so far as this unsold property is concerned, arises from the fact that Parkes, Jr., claims to be the owner of a majority of the debts assumed by the grantee, Hanner. For complainants it is insisted that J. L. Parkes, Jr., holds these claims for his father, and has in fact paid them off for his father, and that the latter has thereby acquired an interest in the property which complainants may subject to their judgment. The evidence fails to establish this contention. Parkes, Jr., is shown to have been for several years a thrifty, energetic, young business man, and to have made a series of transactions out of which he realized a profit sufficient to enable him to buy in these claims. His evidence is that certain of these creditors became urgent for their money, and were annoying his father; that his uncle, Dr. Hanner, had not been able to make a satisfactory sale of the property, and was anxious to save himself and the grantor by procuring as large a price as possible that he might pay off all the debts assumed. To satisfy these creditors and prevent a forced sale of the property, Parkes, Jr., says he paid off the pressing creditors, and took an assignment to himself, believing the security ultimately good, and being willing to thus relieve both his father and uncle from the urgency of the creditors whose claims he bought. His testimony is uncontradicted, and is in part confirmed by other witnesses, and we see no sufficient reason, on the proof in this record, for doubting his motives or questioning his veracity. There is absolutely no affirmative evidence that the money used in buying these claims was furnished by Parkes, Sr., or that the latter was to acquire any interest by the transaction. The filial affection of the son quite accounts for his willingness to invest his own means in a way which would relieve the urgency of his father's creditors, and at the same time enable Dr. Hanner to sell the property to the best advantage, and thus save himself from loss through a transaction into which he seems to have entered from kindly consideration towards his relative, Parkes, Sr. We cannot say that the complainants have not shown many circumstances calculated to arouse the suspicion that J. L. Parkes had either retained or subsequently acquired some interest in the property conveyed to Hanner. Neither can we say that all of these circumstances have been explained with absolute satisfaction. But upon the whole case we reach the conclu-

sion that complainants have not made out a case which would justify this court in reversing the action of the circuit court. It is therefore ordered that the decree be affirmed.

BRADSHAW et al. v. MINERS' BANK OF JOPLIN et al.

(Circuit Court of Appeals, Seventh Circuit. July 17, 1897.)

No. 390.

1. INJUNCTION—JUDGMENT AGAINST GUARANTOR—INDEMNITY.
The payors of a note, who have a legal defense to an action thereon, may enjoin the enforcement of a judgment rendered without their fault or laches against a guarantor of such note who holds valuable stock belonging to them as collateral security to indemnify him against the payment of the note.

2. NOTE—CONSIDERATION—DEFENSE.
A note given for the purchase price of property, and made payable to a bank at the request and for the benefit of the seller, is subject, in the hands of the bank, to all infirmities in the original consideration between the payors and such seller, in the absence of circumstances creating an estoppel in equity.

3. APPEAL—PARTY NOT SERVED.
The right of appeal is not affected by the fact that there is no decree against one of the respondents, who was not served with process, and who, though a proper, is not a necessary, party to the suit.

4. FEDERAL COURTS—JURISDICTION—ANCILLARY PROCEEDINGS.
A bill to enjoin the prosecution of a creditors' suit pending in the same court is ancillary to such suit, and jurisdiction does not depend on the diverse citizenship of the parties.

Appeal from the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

This was a suit in equity to enjoin the prosecution of a creditors' bill filed by the Miners' Bank of Joplin to enforce collection of a judgment against the respondent Corwin C. Thompson. Demurrers were sustained to the original and amended and supplemental bills, and decree entered dismissing the suit as against the bank for want of equity. Complainants appeal.

In this case, now here the second time, the suit was brought by the appellants, Frank M. Bradshaw and George W. Henry, citizens of Illinois, against the Miners' Bank, a corporation of Missouri, the Illinois & Missouri Lead & Zinc Company, a corporation of Illinois, and Corwin C. Thompson, a citizen of Illinois. On the first appeal, which was from an order dissolving a temporary injunction, it was held that upon the facts stated in the bill the appellants were not entitled to relief. Bradshaw v. Bank, 46 U. S. App. 663, 23 C. C. A. 578, and 77 Fed. 932. The substance of the original bill was that the appellants purchased certain property of the Illinois & Missouri Lead & Zinc Company, for which they executed their promissory notes in the aggregate amount of $4,050 to the Miners' Bank, which, it was averred, had no interest of its own in the notes, but was made payee at the request and solely for the benefit of the Illinois & Missouri Lead & Zinc Company; that at the same time Thompson executed to the Miners' Bank a separate writing, whereby he guarantied the payment of the notes; that on that guaranty the Miners' Bank had recovered judgment in the court below against Thompson for the full amount of the notes, and upon a creditors' bill in the same court showing execution upon the judgment returned nulla bona had procured the appointment of a receiver of Thompson's property; that by reason of false representations of the character and condition of the property for which the notes were given