

SUPREME COURT,

STATE OF ILLINOIS.

IN CHANCERY.

JONATHAN RICHARDS, *et. al.*

Plaintiffs in Error,

vs.

HENRY C. HYDE, *et. al.*

Defendants in Error,

Error to Cook Co. Circuit Court.

Brief of Plaintiffs in Error.

This is an appeal from an order dismissing the bill, upon motion, for want of jurisdiction.

It is a bill filed in aid of an execution issued out of the Cook County Circuit Court, directed to the Sheriff of Winnebago county, and levied upon property in said county which is charged to have been fraudulently conveyed for the purpose of hindering, delaying and defrauding creditors. The facts in which the fraud consists are stated therein. The complainants reside in Cook county. The property is in, and one defendant resides in, Winnebago county. The other defendants are non-residents.

The defendants relied upon section 2 of the Chancery Code, but cited no authorities.

The plaintiffs in error claim that this proceeding is not an original bill, but supplementary and auxiliary to the suit at law, for the purpose of giving effect to the regular process of the court, and afford the complainants the relief sought, viz. payment of their judgment.

1. Upon principle. The court by Statute has authority to issue its process to a foreign county, commanding the Sheriff to obtain satisfaction of its judgments from the property of the defendant. By a familiar principle, the court having the power to direct the officer to make the execution out of the property of the defendant, by a necessary implication, would have authority to take the steps absolutely necessary to make the power effectual and practical. If a party can throw obstructions fraudulently (as in this case) in the way of the process of the court, and the court have no right to remove them, then the power of the court becomes entirely useless, for that power which depends upon the volition of the object towards which it is to be exercised is hardly worth the name.

In the case at the bar, if the allegations of the bill are to be taken as true in this proceeding, the defendant has fraudulently conveyed away his property for the purpose of defeating a process of the court regularly and within its authority issued. Now, must this court seek the aid of another forum to protect itself and its process from the fraud of the defendant? In other words, has it not *ex necessitate* power to *enforce* its commands as against fraud?

In *Steiff vs. Hart*, 1 Comstock, N. Y. Court of Appeals 20, the court say, page 30:

"Whenever a power is given by statute, *everything* necessary to making it effectual, or requisite to attain the end, is implied."

In that case a well settled rule of common law was determined, overruled by implication, because it interfered with the proper carrying out of a provision of the statute.

There are many other cases referred to in this case, in which this power has been exercised.

1 Kent Com., 464.

The doctrine is fully recognised in *O. Field vs. the People*, 2d Scamm., 79.

The Court of Chancery is not a separate tribunal, but the powers formerly exercised by Courts of Chancery exclusively are, by the constitution and statutes of this State, merely conferred upon the courts of law. (See Court Act, art. 5, sec. 1.) And the chancery code merely prescribes the *method of exercising that power* by the court having the power.

2. The question has been distinctly decided that a creditor's bill was not an original bill, but merely a continuation of the suit at law. In the case of *Haddan vs. Spader*, 20 Johnson's Reports, 554, which was a bill filed by a creditor to reach property fraudulently assigned, in page 574, the court say, "The jurisdiction of Chancery is supplementary and in aid of the common law process, and if confined to cases of fraudulent assignments I perceive nothing dangerous or alarming in the exercise of such a power; on the contrary, it seems wise and salutary in giving full and firm effect to the writ of *Fieri Facias*."

In the case of *Tarbell vs. Griggs*, 3d, Paige, 207, which was a creditor's bill filed in the State Court upon a judgment in the United States Court, the Chancellor held that the State Court had no jurisdiction, because it was in aid of the process of the United States Court: in other words, on the ground that it was not an original suit, which is the principle contended for in this case.

In the case of *Hatch vs. Dow & Rendick*, 4th McLean 112, the court expressly holds that a creditor's bill is a continuation of a suit at law and *not an original suit*, and decides that a change of citizenship after judgment, but before bill filed, does not divest that court of jurisdiction in the suit in equity, because it is a continuation of the same proceedings.

When a legal claim is established by a judgment, and courts of law are unable to afford adequate relief, from a defect in their process or powers, a Court of Equity may assist the creditor. 11 Vam. 283, 12 ib. 699, Walk. ch. 28.

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Filed April 21, 1889
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Abstract of the Case.

This is an appeal from an order of the Cook County Circuit, dismissing the bill for want of jurisdiction.

- Pages.
1 & 2. The Bill of complainants is a bill in aid of execution, and was filed on the Eleventh day of June, 1858, stating that the complainants were co-partners, residing in Chicago, in the County of Cook, and as such co-partners, in the term of April, A.D. 1858, recovered, in said Circuit Court of Cook County, a judgment against Ebenezer Hyde, one of the defendants, for ten hundred thirty 20-100 dollars, damages and costs. The proper issuing of an execution, on the 12th day of May, in the year 1858, directed to the Sheriff of Winnebago County, the then residence of defendant, Ebenezer Hyde; a proper endorsement and delivery to the Sheriff of said County, on the 19th day of said May; that on the 20th day of said May the Sheriff levied upon the interest of said Ebenezer Hyde in certain real estate mentioned in the bill, in said County of Winnebago. Also, the endorsement of said levy upon the execution; that said execution was in full force and effect at time of levy and filing bill, and judgment wholly unsatisfied, and that the Sheriff cannot safely proceed to sell said real estate, to satisfy said execution, for the reason that the said Ebenezer Hyde, and his wife, also defendant, on the 10th day of October, 1857, for the purpose of defrauding the complainants and other creditors of said Ebenezer Hyde, conveyed said property to defendant, Lathrop, on trust, to secure a pretended indebtedness to defendant, Henry C. Hyde, a son of Ebenezer, which transaction is charged to be entirely fraudulent, and the facts showing that are stated in the bill. All the defendants, except Lathrop, are averred to reside in Iowa, and Lathrop in said Winnebago County. Which bill is duly verified.

13. Afterwards the defendants, by George Scoville, their Solicitor, appeared and moved the court to dismiss the bill of complaint in this case, for want of Jurisdiction of this Court.

14. Afterwards, and on the 26th day of October, 1858, said court, on this motion dismissed the bill with costs, from which decision the complainants appealed to this court.

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Abstract of Plaintiffs in Error.

SMITH & DEWEY,

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Submitted May 11th /59

Filed May 9. 1859

L. Leland

Clerk