

Milligan Vs. Milledge

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SooperKanoon Citation : sooperkanoon.com/78351

Court : US Supreme Court

Decided On : 1805

Appeal No. : 7 U.S. 220

Appellant : Milligan

Respondent : Milledge

Judgement :

Milligan v. Milledge - 7 U.S. 220 (1805)

U.S. Supreme Court Milligan v. Milledge, 7 U.S. 3 Cranch 220 220 (1805)

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ERROR TO THE CIRCUIT COURT

FOR THE DISTRICT OF GEORGIA

SYLLABUS

A plea in bar to a bill in chancery, denying only part of the material facts stated in the bill, is not good. A mere denial of facts is proper for an answer, but not for a plea.

The want of proper parties is not a good plea if the bill suggests that such parties are out of the jurisdiction of the court.

The want of proper parties is not sufficient ground for dismissing the bill.

In a proceeding by bill to sell lands for the payment of debts, where the heir is the proper party, it is not necessary to make the executor a party.

The object of the bill was to recover from the defendants, as legatees and devisees of George Galphin, deceased, a debt due by him to the complainant's intestate, as surviving partner of Clark & Milligan. The bill charges that Clark & Milligan were merchants in London; that Milligan survived Clark, and that the complainant is the administrator of Milligan, the survivor; that in the year 1770 they supplied George Galphin with goods; that in 1773 George Galphin requested them by letter to supply goods to his three sons, Thomas, George and John, his nephew David Holmes, and John Parkinson, under the firm of Galphin & Holmes; that on the credit of G. Galphin, the elder, they shipped goods, &c., to the said company.

That in 1776, G. Galphin, the elder, wrote to Clark & Milligan, to furnish goods to the said company at their store in Pensacola, and that he would see them paid; that relying on the said engagement, they shipped further goods to the said company at Pensacola, and on 31 December, 1780, G. Galphin, the elder, owed,

Sterling

For himself 1,120 1 2

For Galphin, Holmes & Co. 1,296 5 3

And, Jan. 1, 1784, for the Pensacola firm . 3,959 15 9

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That G. Galphin the elder died testate in 1781 or 1782, and duly appointed James Parsons, John Graham, Laughlin McGillvray, John Parkinson, William Dunbar, and

his sons, John, George and Thomas Galphin, his executors, and left real and personal estate sufficient to pay all his just debts.

That all the executors declined the trust excepting the three sons; that the co-partnership of Galphin, Holmes & Co. was dissolved on the day of without any funds for the payment of their debts; that John and George Galphin, two of the executors, never meddled with the deceased's estate, having been long insolvent, are not within reach of the process of this Court, are unknown to the complainant, and gone to places out of his knowledge.

That William Dunbar is dead, leaving no assets of the deceased's estate.

That David Holmes is dead, and left no property, to the knowledge of the complainant.

That Thomas Galphin and John Parkinson are out of the jurisdiction of the court, and not possessed of any property, to the knowledge of the complainant.

That John Milledge, and Martha his wife, who is daughter of G. Galphin, the elder, and a principal legatee and devisee under his will, have received, and are possessed of, lands, negroes, and assets of the estate of her father, which came to them by descent, devise, or distribution, and liable to the claim of the complainant.

That Thomas, who resides in South Carolina, holds no property of the deceased in South Carolina; that the assets in that state have all been exhausted in satisfying prior judgments, or otherwise.

That all the assets are in Georgia in the hands of Milledge and wife, who must be considered as the agents and trustees of the executor, Thomas Galphin, or of the creditors and liable to account for the same.

Milledge and wife, the only persons made defendants in the bill, pleaded in bar, as follows:

"The plea of Martha Milledge, one of the defendants to the bill of complaint of William Milligan."

"The end of the complainant's bill is to render liable to the payment and satisfaction of an unliquidated demand on an open account, said to be due by the estate of George Galphin, in his own right and as security and guarantee for Galphin, Holmes & company, certain property, real and personal, which is charged by the complainant to have come into the hands and possession of this defendant as one of the devisees and legatees of the said George Galphin, deceased."

"This defendant, by protestation not confessing all or any of the matters contained in the said bill to be true, in such manner and form as the same is therein set forth and alleged, doth plead in bar of the same, and for plea saith that the complainant states that David Holmes, late co-partner in the house of Galphin, Holmes & Co. and David Holmes & Co. is dead and left no property or legal representatives at his decease within the State of Georgia; that neither John Parkinson nor William Dunbar has ever qualified on the will of George Galphin, and has never come into the possession of any of the estate of the said George Galphin, or if they have that it is disposed of and exhausted; that Thomas Galphin holds no property or estate of the said George Galphin, and that the assets of the said estate in the State of South Carolina have all been exhausted in satisfying prior judgments or otherwise."

"But this defendant avers that the said David Holmes died possessed of considerable estate, real and personal, part of which, if not all, must be in possession of his legal representatives; that William Dunbar qualified on the will of the said George Galphin, and died leaving in the possession of his executors, administrators, or legal representatives considerable estate, real and personal, which he got either by being

one of the qualified and acting executors on the said will or by his intermarriage with Judith Galphin, one of the devisees and legatees under the will of the said George."

"And this defendant further avers that Thomas Galphin and John Parkinson, charged and stated to be two of the surviving co-partners of which this defendant Co. and David Holmes & Co. of which this defendant knoweth not, and said Thomas Galphin, being now the only acting and qualified executor of the last will and testament of the said George Galphin, are and this defendant is ready to show that they must be in possession of considerable real and personal estate derived from the estate of the said George Galphin, deceased; that they are the proper persons liable and interested to contest, and who can with safety contest, the complainant's demands, if any he has, and the relief prayed in the said bill."

"And this defendant doth further aver that the debt or demand of the complainant, if any doth exist, originated in the State of South Carolina; that all material, necessary, and indispensable and requisite parties, to-wit, the said Thomas Galphin and John Parkinson, and the executors, administrators or legal representatives of William Dunbar live and notoriously and openly reside in the State of South Carolina and in possession of estates, real and personal, sufficient to pay the complainant's demand, if any he has, and which estates and property are more particularly liable to the said demand, if any he has, and that the said parties are also amenable and compellable to appear to any suit or bill brought against them by the said complainant for his said demand, if any he has, in the state aforesaid. All of which facts are in the knowledge of the complainant and to him well known before the filing of his said bill, for that the complainant also lives and resides in the State of South Carolina; that this defendant is an entire stranger to and ignorant of the merits and justice of the claim set up by the complainant, not being named as executrix in the will of the said George Galphin or ever having intermeddled with the concerns of the said estate or any ways

interested in the co-partnership aforesaid. All which matters this defendant doth aver and plead in bar of the complainant's said bill and of his pretended demands, for which he seeks to be relieved by his said bill. And this defendant prays to be hence dismissed, with her reasonable costs in this behalf most wrongfully sustained."

This plea was sworn to before a justice of peace.

The plea of John Milledge was the same, in substance, as that of his wife.

There was also a joint and several answer of Milledge and wife, which states no other facts than the following:

"That there never did exist any secret or special trust, promise, covenant, or understanding between these defendants and the executors of George Galphin the elder, deceased, as charged in the bill of complaint, or did these defendants or either of them ever give any bond of indemnity or other security whatever to be accountable to Thomas Galphin or John Parkinson or any or either of the executors of the said George for any property, real or personal, which might have come into the possession or held by either of these defendants. That there does not now exist any secret or special trust, promise, covenant or understanding between these defendants and the executors aforesaid. And these defendants do jointly and severally deny all manner of unlawful combination . . . without that, that any other matter or thing in the said bill of complaint contained, material or necessary for these defendants to answer unto, not herein answered unto. All which matters and things these defendants are ready to aver and maintain. . . ."

At May term, 1803, of the circuit court, holden by his honor Judge Moore, the only entries on the transcript of the record which came up are as follows: "Bill and amended bill." "Plea and answers." "On argument the plea sustained." There is no entry of a demurrer or motion or of any other proceeding except the continuances after filing the pleas and answers until the May term, 1803.

At May term, 1804, of the circuit court, holden by his honor, Judge Johnson the following decree was made.

"This cause came on to be heard this 14 May, 1804, upon the bill and exhibits, and the pleas and answers of the defendants, whereupon, it appearing that in the term of May, 1803, before the Honorable Alfred Moore, one of the judges of the said court, the cause was heard upon the bill and the pleas, and that after argument, it was adjudged by the court, at the term of May, 1803, that the said plea be sustained, and it appears that the complainant hath not replied to the said plea. It is therefore ordered and decreed that the bill of complaint be dismissed in pursuance and conformity to the decision of the court at the said term, upon the said plea, the same appearing to the court to be conclusive on the merits of the complainant's bill."

"Dated as Savannah, the day and year before written."

"WILLIAM JOHNSON, Jr."

The complainant sued out his writ of error, and assigned for error:

1st. That by the said decree it is adjudged and decreed that the plea in bar aforesaid, and the matters therein contained, are sufficient to debar the complainant from the discovery and relief sought after by his said bill of complaint, and are conclusive on the merits thereof, and that therefore the said plea should be sustained as a valid and sufficient answer to the bill of the complainant. Whereas the said plea is altogether irrelevant and insufficient, and contains no matter which in law or equity ought to bar the discovery and relief sought after by the bill aforesaid.

2d. That by the said decree it is adjudged that the bill be dismissed, whereas, by the law of the land and the rules of equity, a decree ought to have been made in favor of the complainant for want of a sufficient

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answer upon the merits of the said bill, as to the relief prayed thereby.

MR. CHIEF JUSTICE MARSHALL.

The Court is of opinion that the court below erred in admitting the pleas, and dismissing the bill.

Judgment reversed.