Chappedelaine Vs. Dechenaux

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SooperKanoon Citation : sooperkanoon.com/78423

Court : US Supreme Court

Decided On : 1808

Appeal No. : 8 U.S. 306

Appellant : Chappedelaine

Respondent : Dechenaux

Judgement :

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Chappedelaine v. Dechenaux

8 U.S. (4 Cranch) 306

ERROR TO THE CIRCUIT COURT

OF THE DISTRICT OF GEORGIA

SYLLABUS

If an account stated be pleaded in bar to a bill in equity, such plea will be sustained except so far as the complainant shall show it to be erroneous.

The plaintiffs were aliens, their testators were citizens of Georgia, the suit being against citizens of Georgia. Although the plaintiffs sued as trustees, they were entitled to sue in the circuit court.

No practice could be more dangerous than that of opening accounts which the parties themselves have adjusted on a suggestion supported by doubtful or only probable testimony. But if palpable errors be shown, errors which cannot be misunderstood, the settlement must so far be considered as made upon absolute mistake or imposition, and ought not to be obligatory on the injured party

or his representatives, because such items cannot be supposed to have received his assent. The whole labor of proof lies on the party objecting to the account, and the errors which he does not plainly establish cannot be supposed to exist.

The bill states that the complainants' testator and the defendant's testator, together with three others, *viz.,* Boisfeillet, Du Bignon, and Grand Closmesle, became joint purchasers of the Islands of Sapelo, Blackbeard, Jekyll, and half of St. Catharine, on the coast of Georgia; that Dumoussay was the acting partner, and kept all the accounts, &c.; That an account was stated and signed by the two testators, Chappedelaine and Dumoussay, on 30 April, 1792, by which the former acknowledged a balance of 667 10s. 1 3/4d. due to the latter, but that the account was erroneous in sundry items particularly set forth in the bill; that there were sundry debits which had accrued since that settlement, and that Chappedelaine had been obliged by a suit in equity to refund to Boisfeillet a large sum which Dumoussay had overcharged him. That Dechenaux was the executor of the estate of Chappedelaine as well as of Dumoussay, and as executor of Chappedelaine had defended the suit of Boisfeillet. The bill contains a prayer that the defendant may account touching all monies due on rectifying the errors, and for all other sums due by Dumoussay in his lifetime not credited nor accounted for or which have come to the hands of the defendant, and that he pay over such balance as shall appear on settlement of all accounts, and for general relief. The defendant pleaded the settled account in bar of so much of the bill as sought to open the account, and by answer denied all fraud and error.

Upon hearing, the court below ordered a reference to auditors, with directions

"to make a general statement of accounts between the parties, rejecting any erroneous charges which may appear in their settlement and adding such as may have been omitted."

The auditors, on 23 April, 1805, instead of stating an account, reported that they found "a balance due from the defendant to the complainants, including interest upon the liquidated account up to this date, $15,586.22."

They stated that they had not taken into consideration a claim of the complainants of 1,000, which the estate of Chappedelaine was condemned to pay to Boisfeillet by decree of the court, nor their claim for indemnity for damages said to have been sustained by sale of lands, conceiving those claims not submitted to them, but reserved for the decision of the court.

Exceptions being taken to this report, the court ordered the auditors to

"make a statement showing the items of the general account, which they rejected, in whole or in part, and the reasons of their rejections, and also such items as were added as omissions, and their reasons for so doing."

In obedience to this order, the auditors made an explanatory report, whereupon the court decreed that 604 6s. and 579 8s. 1d. be deducted from the liquidated account of 30 April, 1792; that interest be allowed on the balance at eight percent from that date, and that the defendant pay out of the assets that balance and interest, and the further sum of $3,823, being the amount stated by the auditors as having accrued since 30 April, 1792, and costs.

The errors assigned in the record were,

1. That the bill was insufficient in law.

2. That the court had not jurisdiction, because although the bill states the complainants to be French citizens and the defendant a citizen of Georgia, yet the two testators were citizens of Georgia.

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3. That I. Trubert, who is stated in the answer to be residuary legatee of Dumoussay, was not made a party, and because the other legatees were not made parties.

4. That the stated account has been partially opened, and abatements made to the injury of the legatee.

5. That the exceptions to the report of the auditors ought to have been sustained.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court as follows:

The bill in this case is brought to set aside a stated account which was signed by Dumoussay and Chappedelaine in July, 1792, on the suggestion of fraud on the part of Dumoussay, or, if it be not set aside, to correct its errors and to obtain a settlement of transactions subsequent to that account.

The stated account is pleaded in bar of so much of the bill as requires that the subject should again be opened and the particular errors assigned, with the exception of one in the addition, are denied in the answer.

That the plea in bar must be sustained, except so far as it may be in the power of the representatives of Chappedelaine to show clearly that errors have been committed, is a proposition about which no member of the Court has doubted for an instant. No practice could be more dangerous than that of opening accounts which the parties themselves have adjusted on suggestion supported by doubtful or by only probable testimony. But if palpable errors be shown, errors which cannot be misunderstood, the settlement must so far be considered as made upon

absolute mistake or imposition, and ought not to be obligatory on the injured party or his representatives, because such items cannot be supposed to have received his assent. The whole labor of proof lies upon the party objecting to the account, and errors which he does not plainly establish cannot be supposed to exist. Upon this principle, the report of the auditors in this case, and the exceptions to that report

so far as respects the stated account, are to be considered.

The first exception relates only to the manner in which the auditors understood the order referring the accounts to them, and need not be considered, since the sole inquiry will be whether they have in fact made any deduction from the stated account which was not warranted by the interlocutory order, an order made on the principles which this Court has already declared to be correct.

The second exception refers to the particular deductions made by the auditors. The first is that the item in the stated account of 604 6s. 5d. is reduced to 333 0s. 8d.

The stated account between the parties, marked in the proceedings as the exhibit A, contains this item and states it to be one-fifth of the expenses for disbursements on the Island of Sapelo, which was the joint property of a company consisting of five, of which Dumoussay and Chappedelaine were partners. The items which composed this general account are all contained in exhibit F, stated by Dumoussay on 3 May, 1792, and assented to by Chappedelaine on 23 July, 1792, when the stated account was signed. The total of those disbursements is 4,224 3s. 8 1/2d., and the balance upon the account is 3,021 12s. 1 1/2d., the fifth of which is 604 6s. 5d.

In their explanatory report, the auditors say that they took as the basis of this reduction an account settled by auditors in a suit decided in the Circuit Court of Georgia, which was instituted by Boisfeillet, one of the absent partners, against Dechenaux, who was executor both of Dumoussay and Chappedelaine. The

auditors in that case were examined, and they depose that their corrections were made on the proof of double entries, false charges, omissions acknowledged by the executor of Dumoussay, and charges not proper to be made against Boisfeillet.

This testimony would of itself be sufficient to convince the Court that injustice was done in the settlement

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of July, 1792, but would not show explicitly the amount of that injustice and enable them to say what deductions from that settlement ought to be allowed, because, as was well observed by the counsel for Dechenaux, items might be properly chargeable to Chappedelaine of which Boisfeillet ought not to bear a part.

The court therefore sought, in the documents connected with the report, for that more explicit information.

Upon looking into the exhibit F, there are, upon the face of the paper, obvious errors which demonstrate the incorrectness of that statement and the excessive inattention of Chappedelaine.

The first item on the debit side of this exhibit is the sum of 3,571 3s. 8 1/2d. disbursed for Sapelo. The funds for this disbursement were in part in the hands of Dumoussay as the remnant of advances previously made by the partners. To this remnant he states himself to have added 2,368 12s. 0 1/2d. from his private funds. On this advance made by himself in Georgia, he charges the company 15 percent, amounting to 354 on account of the difference of exchange between money in France and in Georgia, or as he expresses it, for exchange, freight, and insurance.

This charge has been rejected in the accounts of all the partners for many obvious reasons. It is sufficient to observe that as this money was advanced in Georgia by Dumoussay, and repaid to him in Georgia by the partners, there was as much reason for making these charges on the repayment as on the original advance, and with respect to Chappedelaine, it is still more inadmissible, because he had

previously advanced his portion of this money to Dumoussay, and had allowed him 15 percent for these charges in a deduction from that advance, so that this charge, with respect to Chappedelaine, is double.

The third item in this exhibit is a charge of 299 as one year's interest on 2,368 12s. 0 1/2d. This is more than double the real amount of interest.

There is also in the credit side of the account an error of 100 in the addition. The errors apparent on the face of the exhibit F amount to 611, and these errors are of such a description as strongly to characterize the stated account of July, 1792.

In the account stated by the auditors, there are omissions of monies received by Dumoussay, and admitted to be chargeable to him in this account with the company, amounting to 189 10s. 10d.

The account containing these incontestable errors was submitted to auditors, and still further reduced by them. Several of the small errors which they have detected are perceived, but the whole cannot be traced by this Court without engaging in the laborious task of auditors, which is incompatible with our duties. To that account the executor of Dumoussay, who was also the executor of Chappedelaine, was a party, and had a right, with respect to Boisfeillet, to rely upon the stated account of July, 1792, signed by Chappedelaine, because Chappedelaine was the attorney in fact of Boisfeillet, and because Boisfeillet had sanctioned that settlement, and had assumed the payment of his part. Yet in that case the deductions from that account were made which the auditors in this case have taken as the basis of their settlement, and those deductions were made in consequence of double entries, false charges, and charges not admissible against Boisfeillet.

The great difficulty in admitting such an account under such circumstances consists in the uncertainty of the amount of those charges which were rejected as being inapplicable to Boisfeillet. This difficulty is removed in a great measure by

inspecting the report in the present case. In that report, the auditors take up the items which were rejected on this principle and charge them to Chappedelaine, so that in truth the alterations made in this item are all founded on errors which the auditors have corrected.

The second item of this exception is that the auditors reduced the sum of 336 16s. 3d. admitted in the stated account as being one-fourth of the purchase and expense of Jekyl to 311 9s. 6d., making a difference of 25 7s. 2d.

This item in the exhibit A, which is the stated account, is the result of the exhibit G, which is the account of Jekyl, as settled between Dumoussay and Chappedelaine. There is an obvious error of $4 19s. 10d. in the division, of 3 10s. in the hire of negroes, and the residue of the sum deducted is on account of the same charges on the monies advanced for Jekyl, which were made on the monies advanced for Sapelo, and which are rejected for the same reasons which were assigned for their rejection in that item of the account.

The auditors also reduced the sum of 990 3s. 1d. assumed by Chappedelaine for Boisfeillet, to the sum of 410, making a difference of 580 3s. 1d. Nothing can be more obvious than the propriety of this reduction. Dumoussay charges Chappedelaine with the debt of Boisfeillet, amounting, as he says, to 990 3s. 1d., which Chappedelaine assumes as the attorney of Boisfeillet. In a suit to which the executor of Dumoussay is a party, this debt appears to have been only 410. No man can hesitate to admit that Chappedelaine must have credit with Dumoussay for the difference between the sum alleged to be due and the sum actually due from Boisfeillet.

The auditors also struck out of the stated account the sum of 554 9s. 4d. assumed by Chappedelaine for one of the absent partners, that being considered by mistake as the share of that absent partner in the expenses of Sapelo. The sum actually due by that partner was afterwards paid by himself to the executor of Dumoussay. The Court is satisfied from the evidence that this payment was made

to Dechenaux as the executor of Dumoussay. The assumpsit of Chappedelaine was essentially as security for the absent partner, who still remained a debtor, and when the principal did himself pay what he owed to the original creditor, the assumpsit of Chappedelaine was of no further obligation. Although this was not an error in the account when settled except so far as this charge exceeded the sum with which the absent partner was really chargeable, yet it becomes an item which can no longer be retained as a charge against Chappedelaine, and in reforming

their accounts it must be excluded from them.

There is also added to the credits of Chappedelaine the sum of 26 18s. which the auditors state to be the difference between the amount of a receipt given by Dumoussay and the sum actually debited to him in the accounts between the parties.

These several errors make up the sum of 1,457 8s. 4d. from which is to be deducted the sum of 667 10s. 1 3-4d. admitted on the stated account to be due from Chappedelaine to Dumoussay. The balance standing to the credit of Chappedelaine would be, on 30 April, 1792, 789 18s. 2 1/4d.

The auditors state this balance at 1,346 10s. 7d. But from this balance reported by the auditors is to be taken the sum of 305 13s. allowed by Chappedelaine on the repayment in Georgia of money lent by him to Dumoussay in France. This sum has been disallowed by the auditors, but was allowed by the circuit court and is allowed by this Court. This would reduce the report of the auditors to 1,030 17s. 7d., exceeding the balance which is here supposed by the sum of 240 19s. 4 3/4d.

The greatest part of this excess is produced by one-third of merchandise sold and not entered in the account and by a credit for continuing interest up to 30 April, 1792, on Chappedelaine's money in the hands of Dumoussay, which credits had been omitted in the stated account without any apparent reason, and must therefore have been among the numerous inaccuracies of that account. The residue of this excess is said by the auditors to be produced by numerous minute

errors detected by a laborious investigation of all the accounts between the parties. This Court cannot pursue them in that investigation. But in a case so replete with errors, which mark excessive negligence on the one side and which can scarcely be ascribed to mistake on the other, the Court is of opinion that the report of the auditors stating that these corrections were made on the inspection of the vouchers and entries which

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were laid before them ought to be received unless the person taking the exception had himself required the testimony on any particular point to which he objected to be submitted to the court or had required a special statement from the auditors, exhibiting the reasons for their opinion on the particular point.

The balance due to Chappedelaine on 30 April, 1792, is so much of the loan made by him to Dumoussay in France which remains unpaid. By the contract between the parties, that loan was to carry an interest of six percent per annum until paid. The Court therefore cannot consider it as a claim on an unsettled account or as carrying interest at the rate established in Georgia. It is still governed by the law of the contract, and must carry interest at the rate of six percent per annum.

To the report, so far it respects the accounts subsequent to 30 April, 1792, a general exception is taken which is sufficiently repelled by the answer of the auditors. They say if in the opinion of the defendant below the auditors admitted any charge against Dumoussay which was not sufficiently supported by testimony, he ought to have obtained a special statement from the auditors, or have made a special exception, which would bring the testimony on the particular point before the court. The only objection which the Court can notice is the allegation in the exception that the auditors have proceeded on accounts rendered by Dechenaux, without allowing him a credit which he claimed in those accounts. That credit is the balance appearing to be due to Dumoussay by the stated account of July, 1792. But that balance was entirely changed. The item was fully disproved by the testimony laid before the auditors. Dechenaux did not then withdraw his account and require the plaintiff below to support his claims by other vouchers. It was

clearly in the power of the plaintiff to have done this, for he might have forced Dechenaux to produce the entries and vouchers from which he had made out the account exhibited by himself. By leaving this account with the auditors without objection, he acquiesced in their considering as correct the items it admitted.

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This bill was brought to correct the stated account of July, 1792, and to settle the accounts between the parties subsequent to that period. The defendant exhibits the accounts subsequent to that period, but claims to set against them the balance due to his testator under the settlement of 1792. On those subsequent accounts that balance has no influence. By introducing it into an account he was compellable to render, he cannot destroy the effect of that account. Had he intended to rely on this circumstance, he ought to have made the point before the auditors, and thus have enabled the plaintiff to take other measures to substantiate his claim. The auditors say they "admitted the account presented by the defendant," but this must be understood with the exception of the balance which he claimed under the settlement of July, 1792. It does not appear from their report that the claims of the plaintiff below rested on that account so far as it went; but it is probable that further research was deemed unnecessary. The Court cannot say that in this the auditors erred.

The decree of the circuit court is affirmed so far as it accords with this opinion and is reversed as to the residue.