

Rhea Vs. Rhenner

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Court : US Supreme Court

Decided On : 1828

Appeal No. : 26 U.S. 105

Appellant : Rhea

Respondent : Rhenner

Judgement :

Rhea v. Rhenner - 26 U.S. 105 (1828)

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Rhea v. Rhenner

26 U.S. (1 Pet.) 105

APPEAL FROM THE CIRCUIT COURT OF THE DISTRICT

OF COLUMBIA AND COUNTY OF WASHINGTON

SYLLABUS

The law seems to be settled that when the wife is left by the husband without maintenance and support, has traded as a *feme sole*, and has obtained credit as such, she ought to be liable for her debts, and the law is the same whether the

husband is banished for his crimes or has voluntarily abandoned the wife.

By the laws of Maryland, a *feme covert* who has been abandoned by her husband is not permitted to marry a second time until her husband shall have been absent seven years and shall not have been heard of during that time.

By those laws, a married woman cannot dispose of real property without the consent of her husband, nor can she execute a good and valid deed too pass real estate unless he shall join in it. The separate examination and other solemnities required by law are indispensable, and must not be omitted. A deed therefore, executed by a married woman of real property acquired. by her while a *feme sole* trader while she was abandoned by her husband, is void.

A bill had been filed by Daniel Rhenner, the appellee, against Daniel Rhea and Elizabeth, his wife, and William Erskine, an infant, the son of Elizabeth Rhea, by a former husband, Robert Erskine.

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MR. JUSTICE DUVALL delivered the opinion of the Court.

The appellee, who was complainant in the court below, filed his bill in equity in the year 1822 in the circuit court against Daniel Rhea, and Elizabeth his wife, and William Erskine, an infant son of said Elizabeth. The bill alleges that Elizabeth Rhea, formerly Erskine, was indebted to the complainant in the sum of \$300 for goods sold and delivered; that being pressed for payment, she, with the defendant, Rhea, with whom she then lived, agreed that if allowed further time, they would secure the debt by conveying to Rhenner a lot of ground, No. 165, in Beatty & Hawkins' addition to Georgetown which was the property of said Elizabeth and which had been conveyed to her by the name of Elizabeth Erskine.

That Rhea, together with the said Elizabeth, by their deed

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bearing date May 13, 1819, conveyed to the complainant the lot of ground before mentioned for the purpose of securing the debt with interest, and stipulated that if the debt was not paid in two years, it should be held in trust with power to sell the same and apply the proceeds, &c.;

The bill further states that the said Daniel and Elizabeth, a few days before the date of the deed to the complainant, *viz.*, on the tenth of May, 1819, but after the agreement to convey to the complainant, fraudulently conveyed the same premises to the defendant Erskine, an infant son of said Elizabeth, in fee in consideration of natural love and affection; that he, the said Rhenner, had at a considerable expense, at the request and with the knowledge and approbation of the defendants, erected improvements on the lot and put a tenant in possession of the same, but that the defendant, by collusion, soon after obtained possession of the same and still keep it, claiming to hold it under the deed to the infant. The bill concludes with praying that the deed to William Erskine may be declared void and that the property may be sold to pay his claim, &c.;

The defendant, Daniel Rhea, in his answer admits that his wife, before his intermarriage with her, *viz.*, in May, 1819, was the wife of one Robert Erskine and was engaged in carrying on business for herself; that he did agree to join and did join her in the conveyance to the complainant and in that to her son; that he had no title or interest in the premises; that the property belonged in May, 1819, to Elizabeth Erskine, who was a married woman, and he denies all the other allegations in the bill.

Elizabeth Rhea in her answer avers that she was married to Robert Erskine in January, 1812; that after her marriage, in the absence of her husband, one Adam Mayne conveyed to her the premises mentioned in the bill of complaint; the deed bears date on 7 April, 1817; that her husband Erskine left her in the year 1814, and she believed he was alive in May, 1819, and that she was not at that time the wife of Daniel Rhea; that in July, 1821, Erskine having then been beyond seas more than seven years, she married Daniel Rhea, having received no support from her former husband since he left her.

The answer of the infant is put in by his guardian in the usual form, submitting to the protection of the court without admitting or denying any of the facts alleged in the bill.

In this state of the proceedings, the court decreed a sale of the lot before mentioned for payment of the claim of the complainant and appointed a trustee to make the sale under the terms prescribed in the decree, reserving the claim of the complainant for proof on it and further order. From this decree

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there was an appeal, and the cause is now before this Court for its decision. The question submitted by the arguments of the counsel is whether the contracts and engagements of Elizabeth Rhea, made in the absence of her first husband and prior to her marriage with the defendant Rhea, are obligatory, and to what extent a woman who has been abandoned by her husband may contract debts for which she is personally liable.

The law seems to be settled that when the wife is left without maintenance or support by the husband has traded as a *feme sole* and has obtained credit as such, she ought to be liable for her debts. And the law is the same whether the husband is banished for his crimes or has voluntarily abandoned the wife. It is for the benefit of the *feme covert* that she should be answerable for her debts and liable to an action in such a case; otherwise she could not obtain credit, and would have no means of gaining a livelihood. A decision to this effect by the Court of Common Pleas in England is reported in 1 Bos. & Pull. 359. In delivering the opinions of the court, Mr. Justice Buller refers to the case of Lady Belknap, whose husband was exiled. She was permitted to sue in her own name. The husband of Lady Sandys was banished by act of Parliament during life, and it was decreed in her case, that she might in all things act as a *feme sole* and as if her husband was dead, and that the necessity of the case required she should have such power, 1 Vernon 104. And the same reason applying where the husband had abjured the realm, the wife in that case was allowed to sue as a widow for her dower. In such case, she has been permitted to alien her land without her

husband, and is exempted from the disabilities of coverture. It has been uniformly considered that banishment or abjuration is a civil death of the husband. In the case of *Gregory v. Paul*, reported in the 15th volume of Mass., all these cases are reviewed by the Supreme Judicial Court of Massachusetts and the law recognized. In the case under consideration, there was a voluntary abandonment of the wife by the husband without having furnished her with the means of support. In his absence, she traded and dealt as a *feme sole*, and is liable for her debts. When the deeds for the lot aforementioned was executed, her husband had been absent five years only; she continued under a coverture, and was the wife of Robert Erskine, her first husband. There is no evidence that she was at that time married to Daniel Rhea, and if the marriage had been proved, it would have been illegal and unavailing. A *feme covert* who has been abandoned by her husband is not permitted to marry a second time with impunity until her husband shall have been absent seven

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years and shall not have been heard of during that time. But by the laws of Maryland which must govern in this case, a married woman cannot dispose of real property, without the consent of her husband, nor can she execute a good and valid deed to pass real estate unless he shall join her in the deed.

The separate examination and other solemnities required by law are indispensable, and must not be omitted. The deeds executed by her and Daniel Rhea in May, 1819, are therefore inoperative and void.

The circuit court decreed in this case upon the bill annexed and exhibits, without further testimony. They do not in themselves contain sufficient matter for a decree.

It does not appear that any evidence was taken on commission or otherwise, to establish or disprove the material allegations in their bill.

The record being thus defective, this Court cannot make a final decision. The decree of the circuit is

Reversed and the record remanded for further proceedings.

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