Mandeville Vs. Riggs

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SooperKanoon Citation : sooperkanoon.com/79212

Court : US Supreme Court

Decided On : 1829

Appeal No. : 27 U.S. 482

Appellant : Mandeville

Respondent : Riggs

Judgement :

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Mandeville v. Riggs

27 U.S. (2 Pet.) 482

APPEAL FROM THE DECREE OF THE CIRCUIT COURT OF THE UNITED

STATES FOR THE COUNTY OF ALEXANDRIA IN THE DISTRICT OF COLUMBIA

SYLLABUS

Where a bill was filed against the stockholders of a voluntary association for the purposes of banking, and the process was returned "served" upon some of the

parties named in the bill, and as to others who were not within the reach of the process "not found," the Court stated that it was not meant to say that in cases of this nature it is necessary to bring all the stockholders before the

court before any decree can be made. It well known that there are cases in which a court of equity dispenses with such a proceeding when the parties are very numerous and unknown, and the adoption of the rule should evidently impede if not defeat the purposes of justice.

Upon the death of some of the parties to the bill who had been served with, process, the bill ought to have been revived against their personal representatives if they could be brought before the court, unless same good reason such as absolute in insolvency could be assigned to justify the decision.

One of the great principles which courts of equity generally require all parties who are known and within the reach of its jurisdiction to be made parties is to prevent future litigation and to take away multiplicity of suits. There are exceptions, it is true, to the rule, but they are founded upon special considerations.

We know of no instances where a joint liability has been asserted before a court of chancery on which the decree has not been made against all the parties before it who did not establish some personal discharge.

In a bill filed in the Circuit Court of Alexandria County in the District of Columbia against the stockholders of an association for banking purposes, the bill was dismissed as to those stockholders who were named in the bill, but were not served with process, and it was held to be error. As nonresidents, the Act of Congress of 3 May, 1803, allows proceedings to be had against them by publication in the newspapers in the District.

Where an appeal from the circuit court to this Court was prayed by a number of the defendants and one only executed the proper appeal bond, the objection to the proceedings ought to have been taken by way of preliminary motion to dismiss the appeal for irregularity on account of the failure to give the proper appeal bond.

In July, 1818, a bill was filed by the appellee against certain individuals named in the subpoena charging them with having entered into a certain association or co-partnership, called "the Merchants' Bank of Alexandria." That the partnership for a considerable time issued notes

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and bills, and in other respects prosecuted their trading or business as a bank until about the month of May, 1816, at which time they became so embarrassed as entirely to put a stop to their proceedings. The bill then alleges that sundry notes or bills of various denominations and amounts, issued and sent into circulation by the bank during its operations, amounting in the whole to $20,000, regularly came into the possession of the complainant, and that no part of them has been paid. The bill proceeds to present other facts and proceedings upon which the complainant claimed relief, and concludes with a demand for general relief.

The process was served on twenty-two of the stockholders and defendants. the whole number being sixty-one. An alias subpoena having issued, the marshal returned, as to the others "not found; nonresidents in the County of Alexandria." On 13 August, 1818, a pluries subpoena was issued on which the marshal returned, "executed on John McPherson, the other defendants not found."

In November, 1818, the bill was taken for confessed as to those defendants on whom process had been served and who had not answered, and continued as to the others.

At May rules, 1820, and at November term, 1820, the suit was abated as to such of the deceased defendants upon whom the process was executed, and no proceedings were instituted to bring in their legal representatives. The answers of some of the defendants who were served with process having been filed, depositions taken, reports of the auditor made and the arguments of counsel heard, the court went on to decree the payment of certain sums to the complainant by the parties thus before the court, apportioning the same according to the time they became stockholders in the bank and the periods of issuing the notes held by

the complainant. The bill was dismissed as to the other defendants who did not answer and also as to all those who were either not served with process to appear in the cause or who were served with process and not charged by any evidence on the part of the complainant.

The defendants against whom the decree was rendered prayed an appeal to this Court which was allowed on their

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giving bond and security, &c.; Joseph Mandeville alone, of all the defendants, gave bond to prosecute the appeal.

It is not considered necessary to state in this report any of the points presented by counsel upon which no opinion was expressed by the court, and therefore those proceedings in the case and matters set forth in the bill, answers, and evidence, which are not connected with or required to exhibit the only question decided by the court, and the arguments of the counsel upon them, are omitted.

MR. JUSTICE STORY delivered the opinion of the Court.

This is an appeal from a decree rendered in the Circuit Court of the District of Columbia, sitting in Alexandria, in a suit in chancery in which the appellants were original defendants. The appellants are stockholders in an unincorporated association which was formed in 1815 for the purpose of carrying on the business of banking under the name of the Merchants' Bank of Alexandria; the nature and extent of which association is evidenced by certain articles of agreement, which were at the time published in the newspapers in the District and are set forth in the case. The first article provides that the capital stock may consist of one million dollars, divided into shares of one hundred dollars each, which were to be payable by calls provided for therein. In the other articles, provision is made for the management of the business of the bank by directors and for the issuing of bank notes, &c.;, to be signed by the president and countersigned by the cashier of the bank. The 15th

article declares the object of the stockholders to be that the joint stock of the company

"shall alone be responsible for the debts and engagements of this company, and that no person who may deal with the company . . . shall on any pretense whatsoever have recourse against the separate property of any present or future member of this company or against their persons further than may be necessary to secure the faithful application of the funds thereof to the purposes to which, by these presents, they are liable. But all persons accepting any bond, bill or note . . . of the company . . . thereby give credit to the said joint stock or property of said company, and thereby respectively disavow having recourse, on any pretense whatever, to the persons, or separate property of any present or future member of this company except as above mentioned."

The whole stock of one million dollars was subscribed, and calls to an amount of about one $183,000 were paid in with money or by stock notes discounted for that purpose. The bank went into operation and circulated its notes to a large amount, and finally, after about a year, the bank failed, leaving its notes to an amount, as it is said, of about $90,000 in circulation and unpaid, and having assigned all its property to certain assignees (who were not parties to the bill) for the payment of certain preferred debts and then for the benefit of the creditors generally. These assignees have now no property in their hands for distribution. The original plaintiff is the holder of the bank notes of the bank to the amount of $20,000 and upwards, which remain unpaid. The form of the notes issued by the bank was as follows, "Capital, $1,000,000. The Merchants' Bank of Alexandria promises to pay to C. McKnight or order, on demand, _____ dollars." These notes were signed by the president and countersigned by James S. Scott, who was cashier, and endorsed by C. McKnight in blank, without consideration and solely to enable the notes to circulate as currency as notes payable to the bearer.

The bill seeks payment out of the separate property of the stockholders, to the amount of $20,000, the notes so held

by the plaintiff. It states the articles of co-partnership and charges that the notes were issued by the bank and that it prosecuted business until May, 1816, at which time its affairs, either by mismanagement or by a fraudulent issue of paper beyond its known means, became embarrassed and stopped payment. But it contains no direct charge of fraud or fraudulent misapplication of the funds by the directors or stockholders in distinct terms. It states the assignment of the property of the bank after the failure and charges the preferences therein provided for to be fraudulent, but if not fraudulent, then that the trust fund is insufficient to pay the creditors of the bank without resort to the separate property of the stockholders. It further charges that the plaintiff does not know whether there are other stockholders or not than those sued, and that he has no means of ascertaining them, and calls upon the defendants for a discovery. And the prayer of the bill is that the assignment may be decreed null and void, that the plaintiff's demand may be paid out of the joint funds as far as they will go, and then out of the separate funds of the stockholders, and also for general relief.

In the progress of the cause, some of the original defendants died, and the bill was not revived against their representatives. Some of the defendants put in their several answers, to which the general replication was filed, and against others the bill was taken *pro confesso;* and after several intermediate proceedings, references to, and reports by a master in order to ascertain certain facts, &c.;, the cause was finally set down for a hearing against the defendants who had answered, and those against whom it was taken *pro confesso,* and a decree rendered for the plaintiff, from which the parties against whom it was made have appealed to this Court. The decree in substance declares that there are no funds in the hands of the assignee to pay the debt; that certain defendants (naming them) who had answered do pay the debt to the plaintiff with interest from the first of January, 1818 with costs; that this decree be discharged as to two of the persons so charged by their paying a less sum equal to the amount of the notes issued

by the bank while they were stockholders, and as to the other defendants the decree is that the bill be dismissed,

"it appearing to the court that they are either not served with process to appear in the said cause or where served with process, not charged by any evidence on the part of the plaintiff."

Such is a very summary statement of the case. Several questions have been elaborately argued at the bar respecting the form and sufficiency of the bill as well as the merits of the case. Upon some of these questions much diversity of opinion at present exists among the judges. But as we are all of opinion that there must be a reversal upon two points, we deem it unnecessary to examine any others. Those points are the defect of parties, and the erroneous dismissal of the bill as to any of the defendants properly before the court against whom a decree might have been made.

In the first place as to the defect of parties, we do not mean to say that in cases of this nature it is necessary to bring all the stockholders before the court before any decree can be made. It is well known that there are cases in which a court of equity dispenses with such a proceeding when the parties are very numerous or unknown and the adoption of the rule would essentially impede, if not defeat the purposes of justice. But in the present case, we are of opinion that upon the death of the parties who were before the court, the bill ought to have been revived against their personal representatives if they could be brought before the court, unless some good reason, such as absolute insolvency, could be assigned to justify the omission. The reason is obvious. Supposing the decree against the parties jointly to be good, those who shall pay are entitled to contribution from the other stockholders and their personal representatives. If they are not before the court, they are not bound by the decree, and consequently in a subsequent suit for contribution they may controvert every material fact upon which the decree was founded, and put the party seeking contribution to the full proofs of them, as well as of the responsibility over the party made. One of the great principles upon which courts of equity generally require all

parties who are known and within the reach of its jurisdiction, to be made parties is to prevent future litigation and to take away multiplicity of suits. It is a matter of justice as well as of convenience that all the parties who are ultimately liable to contribution should, when practicable, be brought before the court so that the equities between them may be adjusted as well as the right of the plaintiff. There are exceptions, it is true, to the rule, but they are founded upon special considerations, such as where a decree of contribution would be useless or where the proceeding would defeat the jurisdiction of the court and the parties are not indispensable to a decree, or where the convenient administration of justice forbids it in the particular case.

This reasoning applies with far more force to the dismissal of the bill as to the defendants, who were before the court and who were liable to a decree as stockholders. It is a positive injury to the defendants, who are charged by the decree not only as to their immediate responsibility, but as to the means and proofs of contribution. The decree of dismissal, so far from aiding the other defendants, puts then to the absolute necessity of instituting a new suit for contribution, and to establish every step in its progress by plenary evidence. We know of no instance where a joint liability has been asserted before a court of chancery in which the decree has not been made against all the parties before it who did not establish some personal discharge.

If the bill had been dismissed against those persons only who appeared and answered and whose liability was not proved by the evidence, there would have been no difficulty. But it is dismissed as to all the defendants who did not answer the bill and against whom the bill was taken as confessed and set for a decree. Now if these persons were duly brought before the court, and if due proceedings were afterwards had against them, they certainly were jointly chargeable with the other defendants upon their own default, as in cases of confession.

It is no answer to this objection that no exception was taken at the hearing for the want of proper parties. The objection we are now considering is not merely that the

proper parties were not before the court, but that the bill, being set down for a hearing as to those who had answered and also as to those against whom it had been taken as confessed, the court has decreed against a part only, when it ought to have decreed against the whole, who were chargeable as stockholders. The proper parties for such a decree were before the court, and the error was in dismissing the bill as to any of them. It has been also said that the decree of dismissal, if an error, is only to the prejudice of the plaintiff. But this is not admitted. It was prejudicial to the rights of all the defendants who were charged by the decree.

We are also of opinion that, assuming that the cause might be properly brought to a hearing as to the parties before the court, the decree was erroneous in dismissing the bill as to any of the defendants named in the bill as stockholders upon whom process was not served if, by any proceedings they could have been brought before the court before a final decree. They were known to the plaintiff when he brought his bill, and were named therein, and the other defendants, in proceeding to a hearing, cannot be understood to waive any further proceedings against them. If they were nonresidents, still the Act of Congress of 3 May, 1802, allows proceedings to be had against nonresidents by publication in the newspapers in the district, and no reason is assigned why such a proceeding might not have been effectual to bring them before the court in the present case. We give no opinion what would have been the case if they had not been named in the bill or had not appeared by the bill to have been known to the plaintiff at the time of filing it. But as they were known and named, the same reasons apply to them as to the other defendants before the court and their personal representatives.

It was asserted at the argument that the bill had also been dismissed as to some of the defendants who had answered and admitted themselves liable as stockholders. Upon examining their answers, it is manifest that they were nominal stockholders only, their names having been used without their consent or under circumstances which demonstrate

that they never meant to become stockholders. And no attempt was made at the hearing to charge them with any other proofs. As to them, therefore, the dismissal was properly decreed.

An objection was taken at the argument as to the regularity of the appeal, it having been claimed by all the defendants against whom the decree was made and the appeal bond having been given by Mandeville only. The objection, if it had been material in this case, ought to have been taken by way of preliminary motion to dismiss the appeal for irregularity on account of the failure to give the proper appeal bond. But it is not material in this case, since if Mandeville be considered the only appellant, the error of the decree is equally fatal, and consequentially reinstates the cause, discharged of that decree, as to all his co-defendants.

Upon the whole, we are of opinion that the decree must be

Reversed and the cause remanded to the circuit court with directions to have the cause reinstated as to all the defendants as to whom the bill was taken as confessed and dismissed at the hearing, and with directions also that the personal representatives of the parties to the bill, who died during the pendency of the suit, if they are known, can be brought before the court to be also made parties, and also with directions that all the other defendants named in the bill who were not served with process but against whom further proceedings may be had to bring them before the court (as to whom the bill was dismissed at the hearing) be brought before the court, if practicable, as parties, and that thereupon such further proceedings be had as to justice and equity may appertain.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Columbia holden in and for the County of Alexandria and was argued by counsel, on consideration whereof it is the opinion of this Court that there is error in the decree of the said circuit court in dismissing the bill against the defendants upon whom process was not served and also

against the defendants against whom the bill was taken *pro confesso* and set down for a hearing, and also error in the said court in not requiring the said suit to have been revived before said decree against the personal representatives of the parties thereto who were served with process and died during the pendency of the said suit who were known and might have been brought before the court. It is therefore ordered, adjudged, and decreed by this Court that the decree of the said circuit court in this cause be and the same is hereby reversed and annulled and that the cause be and the same is hereby remanded to the said circuit court with directions to cause the same to be reinstated as to the defendants aforesaid against whom the bill was taken *pro confesso* and set down for a hearing, and by the decree dismissed. And also with directions that the personal representatives of the defendants who died pending the suit who are known and may be brought before the said circuit court be made parties thereto and the bill be revived as to them.