

**Bank of the United States Vs. Ritchie**

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**Court :** US Supreme Court

**Decided On :** 1834

**Appeal No. :** 33 U.S. 128

**Appellant :** Bank of the United States

**Respondent :** Ritchie

**Judgement :**

Bank of the United States v. Ritchie - 33 U.S. 128 (1834)

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**Bank of the United States v. Ritchie**

**33 U.S. (8 Pet.) 128**

*APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR*

*THE COUNTY OF WASHINGTON IN THE DISTRICT OF COLUMBIA*

## **SYLLABUS**

The Bank of the United States and others, "under the authority of the act of the Legislature" of Maryland, passed in the year 1785, entitled an act for enlarging the

powers of the "High Court of Chancery," under which the real estates of persons descending to minors, and persons *non compos mentis*, were authorized to be sold for the debts of the ancestor, proceeded against the real estate of A. for debts due by him, and in 1826 the estate was sold by a decree of the Circuit Court of the District of Columbia, exercising chancery jurisdiction. Afterwards, in 1828, some of the infant heirs of A., by their next friend, filed a bill of review against the administrator of A., the purchaser of his real estate, and others, stating various errors in the original suit and in the decree of the court, and prayed that the same should be reversed. *Held* that a bill of review can be sustained in the case.

From the language of the fifth section of the act, some doubt was entertained whether the act conferred a personal power on the chancellor or was to be construed as an extension of the jurisdiction of the court. If the former, it was supposed that a bill of review would not lie to a decree made in execution of the power. On inquiry, however, the Court is satisfied that in Maryland, the act has been construed as an enlargement of jurisdiction, and that decrees for selling the lands of minors and lunatics in the cases prescribed by it have been treated by the court of appeals of that state as the exercise of other equity powers.

In all suits brought against infants, whom the law supposes to be incapable of understanding and managing their own affairs, the duty of watching over their interests devolves in a considerable degree upon the court. They defend by guardian, to be appointed by the court, who is usually the nearest relation not concerned in point of interest in the matter in question. It is not error, but it is calculated to awaken attention that in this case, though the infants, as the record shows, had parents living, a person not appearing from his name or shown on the record to be connected with them was appointed their guardian *ad litem*.

The answer of the infant defendants in the original proceeding is signed by their guardian, but not sworn to. It consents to the decree for which the bill prays, and without any other evidence, the court proceeds to decree a sale of their lands. This is entirely erroneous. The statute under which the court acted authorizes a sale of the real estate only where the personal estate shall be insufficient for the payment of debts, when the justice of the claims shall be fully established, and when, upon

consideration of all circumstances, it shall appear to the chancellor to be just and proper that such debts should be paid by a sale of the real estate. Independent of these special requisitions of the act, it would be obviously the duty of the court, particularly in the case of infants, to be satisfied on these points.

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The insufficiency of the personal estate of A.R. to pay his debts is stated in the answer of his administrator, but is not proved, and is admitted in that of the guardian of the infants, but his answer is not on oath, and if it was, the court ought to have been otherwise satisfied of the fact.

The justice of the claims made by the complainants in the original proceeding is not established otherwise than by the acknowledgment of the infant defendants in their answer that "according to the belief and knowledge of their guardian, they are, as alleged in said bill, respectively due." The court ought

not to have acted on this admission. The infants were incapable of making it, and the acknowledgment of the guardian, not on oath, was totally insufficient.

The court ought to have required satisfactory proof of the justice of the claims, and to have established such as were just before proceeding to sell the real estate.

There was error in the original proceedings in ordering the sale of the real estate of A.R. for the payment of his debts before the amount of the debts should be judicially ascertained by the report of an auditor.

The eighth section of the law which authorizes the sale of real estate descending to minors enacts

"That all sales made by the authority of the chancellor under this act, shall be notified to and confirmed by the chancellor before any conveyance of the property shall be made."

This provision is totally disregarded. The sale was never confirmed by the court, yet the conveyance has been made. It is a fatal error in the decree that it directs the conveyance to be made on the payment of the purchase money without directing that the sale shall first "be notified to, and approved by" the court.

The conveyances of the real estate, made under the original proceeding, were properly set aside by the decree of the court below. The relief might be very imperfect if, on the reversal of a decree, the party could under no circumstances be restored to the property which had been improperly and irregularly taken from him.

The appellees filed their bill of complaint in the circuit court in the nature of a bill of review against the appellants, in which they set forth that in the year 1825, the appellants filed their bill against the complainants and others, as heirs at law of Abner Ritchie deceased, under the Act of Assembly of Maryland of 1785, chap. 72, sec. 5, alleging themselves to be the creditors of said Abner Ritchie in the several sums of money mentioned in said bill; that John T. Ritchie, son of said Abner, and one of said defendants, had obtained letters of administration upon the estate of said Abner; that complainants had frequently applied to him for the payment of their debts, which he refused, saying that he had not assets of the said estate to pay them or any part thereof, and that said Abner

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had died without leaving personal estate to discharge the debts due by him; that said Abner died possessed of real estate described in an exhibit filed therewith, and that the defendants are the heirs at law of the said Abner, and pray process, &c., against them.

The bill of review proceeds to aver that said process did accordingly issue, and that before said these complainants appeared to the same, an order was obtained by the solicitor for the then complainants appointing Thomas Turner guardian to appear and answer for them; that this order was obtained without their knowledge or approbation and without its having been made to appear that the said parties

were infants and without its appearing, by the terms of the said order, that Turner was appointed guardian for these parties; that said Turner did, however, appear for them as their guardian and filed an answer for these complainants admitting the truth of all the allegations in the bill; that said bill is not on the oath of said pretended guardian, as is usual. They further state that John T. Ritchie, Sr., filed his answer to said bill and, alleging that he himself was a large creditor of deceased, suggested a reference of the various claims to an auditor. That in the year 1826, B. L. Lear, solicitor for said complainants, and T. Swann, also solicitor of said court, misled by some person or persons, entered into an agreement to set the cause for hearing, and did consent that a decree should pass, and which was passed by said court, decreeing that said real estate should be sold and that trustees should convey the same, and that these parties, on their arrival at age, should release to the purchasers all their title to the same. That said sale was accordingly made, and said T. Ritchie, Sr. became the purchaser, and hath received a conveyance.

The parties aver that Mr. Swann had no authority to appear for them or to enter into any consent or agreement on their behalf, or that any decree should be entered against them, and that said proceedings were had without their knowledge or assent, and have never been acquiesced in; that their friends and natural guardians were overlooked and unconsulted. That they are aggrieved by said decree, and ought not to be bound thereby -- that they ought not to convey their estate as by the decree is directed, that said decree is erroneous, and ought of be reversed -- and assign several errors:

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1. There is no allegation in the bill or evidence filed in the case that Abner Ritchie died without leaving personal estate sufficient to pay his debts.
2. That there is no allegation or evidence that his real estate descended to a minor.

3. That said decree was made without any legal or sufficient answer by these complainants, and without the several matters contained in the bill being taken *pro confesso* against them.
4. That there is neither allegation nor proof that either of said defendants was a minor and incapable of answering without a guardian.
5. That the court appointed a guardian *ad litem* without naming the infant defendants or causing them to be brought into court to have a guardian appointed, and without any averment or proof that either of them was a minor.
6. That the order appointing a guardian is vague, uncertain, and void.
7. That the answer of Turner professing to be guardian, &c.;, not being under oath, is insufficient and void.
8. That said decree purports to be by consent, whereas it appears that these complainants never appeared to said suit in person or by guardian, and therefore never could have assented, and cannot, as minors, be bound by the consent of an attorney.
9. That there is not sufficient matter alleged in the bill to sustain the decree if the parties had been competent to assert and had asserted.
10. Because the decree, contrary to right and equity and the uniform rule and practice of the court, directs the trustee to convey, without a ratification of his sale.
11. Because the decree is an absolute one, without giving complainants a day after they shall arrive at age to show cause against the decree.

The bill then avers the death of Henry Carbery, one of the complainants to the first bill, about three years before the filing of said bill, and prays a review and reversal, &c.;

Several of the defendants appeared, and disclaiming any interest, &c.;, assent to the review and reversal

John T. Ritchie answers, averring the correctness of the proceeding, and prays a confirmation of what has been done.

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The Bank of the United States and Union Bank of Georgetown, answering, admit that the original was filed as stated and require proof of the further allegations of complainants; they aver the sufficiency and correctness of the former proceedings, and deny that there is any sufficient cause for a review &c.;

The circuit court decreed a reversal of the original decree and annulled all the proceedings had under it, declaring the parties to be restored to their original rights.

The proceedings in the former case, constitute the only evidence in the case of the review.

For the appellants, it will be contended

1. That no decree can be set aside or reversed on a bill of review, for any reason not appearing on the face of the decree itself, whereas most of the objections here urged, were de hors the decree.
2. Because such of the reasons as are alleged to appear on the face of the decree itself, are wholly insufficient.
3. Because a bill of review will lie only where the original decree, of which complaint is made, has been fully executed by the party complainant, whereas the contrary is apparent on the face of the bill of review.
4. Because the decree of reversal transcends the power of the court, and extends further than the court had jurisdiction to decree.
5. Because it is in other respects inequitable and illegal.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

The Bank of the United States and others, alleging themselves to be creditors of Abner Ritchie deceased, instituted this suit in chancery against John T. Ritchie administrator, and one of the heirs of the said Abner, and against John T. Ritchie, Jr. and others, who were the infant heirs of the said Abner, praying that his real estate may be subjected to the payment of the debts due to them, and that so much of the said estate might be sold as would satisfy their claims.

The bill charges that Abner Ritchie died possessed of a considerable estate, not having left personal estate sufficient to pay his debts.

The subpoena was returned, executed on John T. Ritchie, the other defendants not found. On being called, they appeared by attorney, whereupon, on motion of the plaintiffs,

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Thomas Turner was appointed guardian to appear and answer for the infant defendants. The infant defendants answer that according to the belief and knowledge of their guardian, the said claims are, as alleged in said bill of complaint, due and owing to the several complainants and that Abner Ritchie did die, leaving personal property insufficient for the payment of his debts, having, as is alleged, real property &c.;, and that they have no objection to the sale of a part thereof sufficient to pay his debts. The answer is not sworn to by the guardian.

The answer of John T. Ritchie, administrator, and one of the heirs of Abner Ritchie, admits that his intestate died considerably indebted; suggests that the claims of the complainants should be referred to an auditor, alleges that he is himself a creditor and that the personal assets of his testator are insufficient for the payment of his debts. He is willing that the real estate should be sold and the proceeds applied to the payment of debts.

The cause came on to be heard by consent, and on 21 June, 1826, the court also, by consent of parties, decreed that the real estate of Abner Ritchie deceased, or

such part thereof as may be necessary for the purpose, be sold for the payment of the debts due to the complainants and of such other creditors as should come in, &c.;, within the time prescribed in the decree. A trustee was appointed to make the sale, who, after giving bond with surety and advertising the real property left by the said Abner, or so much thereof as might be deemed sufficient to satisfy his debts, at least three weeks, should proceed to sell the same to the highest bidder, one-fourth of the purchase money to be paid in cash and the residue in four equal installments at six, twelve, eighteen, and twenty-four months, for which the trustee is to take the notes of the purchaser, the property to stand as security for the payment of the purchase money. And upon payment of said notes and interest, the said trustee and the heirs of Abner Ritchie as they respectively attain the age of twenty-one years shall convey in fee. The trustee was directed to report his proceedings to the court at the succeeding term, and to pay into court the net proceeds of the first payment, and on payment of the balance, was to convey. The court appointed Joseph Forrest to report on such claims on the estate of Abner

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Ritchie as should be proved to him before the first Monday in the succeeding November, and the administrator of Abner Ritchie was directed to exhibit to him the settlement of his administration account with the orphan's court.

On 28 March, 1828, the trustee reported that after giving bond and advertising as required by the decree, he had, on 17 July, 1826, sold the property at public sale to John T. Ritchie, the highest bidder, for the sum of \$2,715. That, Mr. Ritchie having produced satisfactory evidence of his having paid all the debts, and becoming the only creditor to an amount exceeding the amount of sales, he had made to him a deed conveying the property.

On 10 June, 1828, the auditor made his report, in which he disallows several claims to a large amount, made by John T. Ritchie against the estate of Abner Ritchie.

In 1828, some of the infant heirs of Abner Ritchie, by their next friend, filed their bill of review against the complainants in the original suit and against John T. Ritchie, the administrator of Abner Ritchie and the purchaser of his real estate, and against such of the other defendants as do not become plaintiffs, in which they state the proceedings in the original suit, and assign various errors in the decree, for which, and for other errors therein, they pray that the same may be reviewed and reversed, that the deed made by the trustee to the defendant John T. Ritchie, and all deeds made by him to the other defendants, may be declared void, and that the sales made by the trustee may be set aside.

The infant defendants answer by their guardian, and admit the allegations of the bill. The other defendants also answer, and insist on the original decree.

The cause came on to be heard in May term, 1830, by consent, when the court, being of opinion that there was manifest error in the original proceedings and on the face of the decrees, did adjudge, order, and decree that the same should be reversed and annulled, and that all proceedings of the trustee therein named, and all sales and deeds made by him by virtue thereof to the defendant John T. Ritchie or any other person, and all deeds made by the said John T. Ritchie of the said real estate to either of the other defendants, or for their use,

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so far as respects the interest of any of the heirs of Abner Ritchie, except the said John T. Ritchie, Sr., should be utterly null and void, and that the complainants be restored to their original estates.

From this decree the defendants appealed to this Court. A doubt has been suggested whether a bill of review could be sustained in this case. The parties proceeded under an Act of the Legislature of Maryland passed in the year 1785, ch. 72, entitled, "an act for enlarging the power of the High Court of Chancery." The fifth section enacts

"That if any person hath died or shall hereafter die without leaving personal estate sufficient to discharge the debts by him or her due, and shall leave real estate

which descends to a minor or person being idiot, lunatic, or *non compos mentis*, or shall devise real estate to a minor or person being idiot, lunatic, or *non compos mentis* or who shall afterwards become *non compos mentis*, the chancellor shall have full power and authority, upon application of any creditor of any deceased person, after summoning such minor, and his appearance by guardian, to be appointed as aforesaid, and hearing as aforesaid, or after summoning the person being idiot, lunatic, or *non compos mentis*, and his appearance by trustee, trustees, or committee, to be appointed as aforesaid, and hearing as aforesaid, and the justice of the claim of such creditor is fully established; if, upon consideration of all circumstances, it shall appear to the chancellor to be just and proper that such debts should be paid by a sale of such real estate, to order the whole or part of the real estate so descending or devised to be sold for the payment of the debts due by the deceased."

From the language of this section, some doubt was entertained whether the act conferred a personal power on the chancellor, or was to be construed as an extension of the jurisdiction of the court. If the former, it was supposed that a bill of review would not be to a decree made in execution of the power. On inquiry, however, we are satisfied that in Maryland, the act has been construed as an enlargement of jurisdiction, and that decrees for selling the lands of minors and lunatics in the cases prescribed by it have been treated by the court of appeals of that state as the exercise of other equity powers.

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We proceed then to examine the original decree and the errors assigned in it.

In all suits brought against infants whom the law supposes to be incapable of understanding and managing their own affairs, the duty of watching over their interests devolves, in a considerable degree, upon the court. [ [Footnote 1](#) ] They defend by guardian to be appointed by the court, who is usually the nearest relation not concerned in point of interest in the matter in question. [ [Footnote 2](#) ] It is not error, but it is calculated to awaken attention that in this case, though the

infants, as the record shows, had parents living, a person not appearing from his name or shown on the record to be connected with them was appointed their guardian *ad litem*.

He was appointed on the motion of the counsel for the plaintiffs without bringing the minors into court or issuing a commission for the purpose of making the appointment. This is contrary to the most approved usage, [ [Footnote 3](#) ] and is certainly a mark of inexcusable inattention. The adversary counsel is not the person to name the guardian to defend the infants.

The answer of the infant defendants is signed by their guardian, but not sworn to. It consents to the decree for which the bill prays, and, without any other evidence, the court proceeds to decree a sale of their lands. This is, we think, entirely erroneous. The statute under which the court acted authorizes a sale of the real estate only where the personal estate shall be insufficient for the payment of debts, when the justice of the claims shall be fully established, and when, upon consideration of all circumstances, it shall appear to the chancellor to be just and proper that such debts should be paid by a sale of the real estate. Independent of these special requisitions of the act, it would be obviously the duty of the court, particularly in the case of infants, to be satisfied on these points.

The insufficiency of the personal estate of Abner Ritchie to pay his debts is stated in the answer of his administrator, but is not proved, and is admitted in that of the guardian of the

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infants, but his answer is not on oath, and if it was, the court ought to have been otherwise satisfied of the fact.

The justice of the claims made by the complainants is not established otherwise than by the acknowledgment of the infant defendants in their answer that, "according to the belief and knowledge of their guardian, they are, as alleged in said bill, respectively due."

The court ought not to have acted on this admission. The infants were incapable of making it, and the acknowledgement of the guardian, not on oath, was totally insufficient. The court ought to have required satisfactory proof of the justice of the claims, and to have established such as were just before proceeding to sell the real estate.

Without knowing judicially that any debts existed, or the amount really due, or the value of the real estate, the court directed

"That the real estate of the said Ritchie, or such part thereof as may be necessary for the purpose, be sold for the payment of debts of said Ritchie to complainants and to such other creditors of said Ritchie as shall come in and bear their proper proportions of the costs and expenses of this suit and shall exhibit their claims, with the proper proof thereof to the auditor hereinafter appointed"

&c.; The decree does not postpone the sale until the claims should be exhibited to the auditor, and consequently, so far as other creditors were concerned, leaves the trustee without information as to the quantity of property it would be his duty to sell. He accordingly sold the whole estate.

The eighth section of the law, which authorizes the sale of real estate descending to minors, enacts

"That all sales made by the authority of the chancellor under this act shall be notified to and confirmed by the chancellor before any conveyance of the property shall be made."

This provision is totally disregarded. The sale was never confirmed by the court, yet the conveyance has been made. It is a fatal error in the decree that it directs the conveyance to be made on the payment of the purchase money, without directing that the sale shall first "be notified to, and approved by" the court.

There are radical errors apparent on the face of the decree which show that the interests of the infants have not been protected as is required by law and usage and that great

injustice may have been done them. The decree therefore ought to have been reversed.

The appellants contend that, even admitting the propriety of reversing the original decree, the circuit court ought to have stopped at that point, and not to have set aside the conveyances which were made under its authority.

All the persons affected by the decree now under consideration were parties when it was made. The bill of review prays for the relief which the court granted, and states all the facts which entitled them to that relief. The power of the court was, we think, competent to grant it if it was required by the principles of equity and justice. The relief might be very imperfect if, on the reversal of a decree, the party could under no circumstances be restored to the property which had been improperly and irregularly taken from him. Cooper, in his equity Pleading, page 95, says,

"The bill may pray simply that the decree may be reviewed and altered, or reversed in the point complained of, if it has not been carried into execution, but if the decree has been carried into execution, the bill should also pray the further decree of the court to put the party complaining of the former decree into the situation in which he would have been if that decree had not been executed. . . . A supplemental bill may likewise be added if any event has happened which requires it."

In addition to these general principles which sustain the rule laid down by Cooper, circumstances exist which require in an eminent degree its application to this particular case. The decree itself was disregarded by the trustee in executing the conveyance. It directed him to receive one-fourth of the purchase money in cash, and the residue in four equal installments. The first payment is to be brought into court, and he is to make the conveyance on receiving the last. He is not authorized to pay the money to the creditors. The court has not entrusted to him the right of deciding on the debts and disposing of the purchase money. He is only to receive

it before he conveys, and consequently should hold it subject to the order of the court.

It does not appear that he has ever received a cent. He undertakes to settle the account of Mr. Ritchie, the purchaser, and to convey the property to him, in violation of the decree,

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on being satisfied by him that he had paid all the debts, and was himself a creditor to an amount exceeding the purchase money.

He had no right to be satisfied of these facts. The court had not empowered him to inquire into or decide on them. He has transcended his powers, and with the knowledge of the purchaser and in combination with him, has executed to him a deed which the law did not authorize. This whole proceeding was irregular and ought to be set aside. The plaintiffs in the original suit will then be at liberty to prosecute their claims according to law.

The Court is of opinion that there is no error in the decree of the circuit court, and that it be

*Affirmed with costs.*

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 Washington, and was argued by counsel, on consideration whereof it is ordered, adjudged, and decreed by this Court that the decree of the said circuit court in this cause be and the same is hereby affirmed with costs.

[ [Footnote 1](#) ]

Coop.Eq.pl. 28.

[ [Footnote 2](#) ]

Coop.Eq.pl. 29.

[ [Footnote 3](#) ]

Coop.Eq.pl. 109.

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