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Boyce's Executors Vs. Grundy

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Court : US Supreme Court

Decided On : 1835

Appeal No. : 34 U.S. 275

Appellant : Boyce's Executors

Respondent : Grundy

Judgement :

Boyce's Executors v. Grundy - 34 U.S. 275 (1835)
U.S. Supreme Court Boyce's Executors v. Grundy, 34 U.S. 9 Pet. 275 275 (1835)

Boyce's Executors v. Grundy

34 U.S. (9 Pet.) 275

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF WEST TENNESSEE

SYLLABUS

On the hearing of the case of *Boyce's Executors v. Grundy,* at January term, 1830, on an appeal from the decree of the Circuit Court of West Tennessee, 3 Pet. 210, the decree of the circuit court was affirmed, by which, after decreeing a

rescission of a contract made between Felix Grundy and James Boyce, the intestate, for the purchase by the former from the letter of a tract of land lying in the State of Mississippi; the Court also decreed, that Robert Boyce, the administrator of James Boyce, of the goods, &c.;, of James Boyce, deceased, do pay the sum of two thousand and sixty-five dollars and twenty-one cents, to be levied on the goods of the said James Boyce in his hands to be administered, and execution issue therefor as at law. In this decree nothing was said as to any allowance of damages or interest. A mandate was issued in the usual form to the circuit court to carry the same into effect. On filing the mandate in the circuit court in 1830, the cause was referred to the clerk, as master, to take an account of the assets of James Boyce in the hands of the administrator, who reported that no assets appeared in the hands of the administrator, but that Robert Boyce had, under an agreement with the appellee, received for rents of the land in Mississippi, before 1 January, 1824, two thousand one hundred dollars, which, with interest thereon, one thousand one hundred and twenty dollars, to 1 September, 1830, would amount to three thousand two hundred and twenty dollars, and that the land in Mississippi was devised by James Boyce, the intestate, to his son Robert Boyce. The report was confirmed except as to the one thousand one hundred and twenty dollars interest. The circuit court decreed that the plaintiff recover of Robert Boyce two thousand one hundred dollars, with interest from the decree, to be levied of his proper goods and chattels, and for the balance due the plaintiff, four hundred and ninety-six dollars and forty-six cents, with interest, in case the same was not paid by him, the plaintiff had, for the whole amount of the decree, a lien on the lands in the State of Mississippi, and that the same should be sold to satisfy the same by the clerk of the court, acting as a commissioner.

Held that if the sum of two thousand one hundred dollars, the rents of the lands in Mississippi, came into the hands of Robert Boyce, as assets of the estate of James Boyce, no decree could be had against him in his individual capacity in this case. The rents, under the agreement, upon the rescission of the contract for the sale of the land, became virtually the money of James Boyce, the intestate, and were assets in the hands of his administrator. The decree should have been rendered against the defendant in the circuit court as administrator, and not

individually. Also *held* that no lien upon the land in Mississippi exists under the decree of the Circuit Court of Tennessee, and that court had no jurisdiction to decree a sale to be made of land lying in another state. Also *held* that the decree is erroneous in allowing interest on the original sum decreed in the circuit court, *viz.* two thousand and sixty-five dollars and twenty-one cents, in 1826 (understood to be the sum of four hundred and ninety-six dollars and forty-six cents) to the affirmance of that decree in the Supreme Court in 1830.

It is solely for the decision of the Supreme Court whether any damages, or interest (as a part thereof) are to be allowed or not in cases of affirmance.

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If, upon affirmance, no allowance of interest or damages is made, it is equivalent to a denial of any interest or damages.

At January term, 1830, this case was before the Court on an appeal by the same appellants, and a decree was rendered in favor of the appellee. 28 U. S. 3 Pet. 210.

The appellee in that case had filed in the circuit court a bill for the rescission of a contract entered into by him with the appellant's testator, James Boyce, for the purchase of a quantity of land in the State of Mississippi, and upon which contract the two first installments, payable by the same, being due and unpaid, a suit had been instituted and a judgment for the amount obtained. The bill also prayed an injunction against the judgment.

The circuit court decreed that the contract should be rescinded, and ordered a perpetual injunction of proceedings on the judgment, and the following mandate was issued from this Court on the affirmance of the decree of the circuit court.

"The President of the United States of America, to the Honorable the Judges of the Circuit Court of the United States for the District of west Tennessee, greeting: "

"Whereas lately, in the Circuit Court of the United States for the District of west Tennessee, before you or some of you, in a cause wherein Felix Grundy was

complainant and Robert Boyce and Richard Boyce, executors of James Boyce deceased, were defendants in chancery, the decree of the said circuit court was in the following words, *viz.* "

" His honor does order, adjudge and decree that said contract or agreement between James Boyce, now deceased and complainant, be in all things rescinded and annulled, and because it appears from the evidence that complainant has never received any part of the rents for the plantation, but that an arrangement between him and Robert Boyce, authorized him (R. Boyce) to sue Reed, the complainant's tenant, in complainant's name, for Boyce's benefit, for the rents of 1819, 1820, 1821, 1822 and 1823, that he did so and recovered therefor, and got the same, and that complainant did, by his agent, Harry L. Douglas Esq., notify defendants to take possession of said land and

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plantation, as he would not retain the same on account of the fraud aforesaid; it also appearing from the records of this Court that this bill was filed on the ___ day of ___, 1823; that at the June term of this Court, 1824, complainant was ready and pressed for a trial, and that the defendants were not ready for trial at that or any subsequent term, but continued the same on their affidavit; and it appearing to the court that complainant did pay said James Boyce the sum of $1,250 on 5 July, 1818, and on that day executed to him his note for $750 in part payment for said land, and that James Boyce had a counterpart of the agreement: "

" It is further ordered, adjudged and decreed that defendant Robert, administrator of the goods, &c.;, of James Boyce, deceased, do pay to complainant the said sum of $1,250, with legal interest thereon at the rate of eight percentum per annum, which appears to be the legal rate of interest in said Mississippi State, from the said 5 July, 1818, until this day, making the sum of $2,065.28, to be levied of the goods, &c.;, of said James in his hands to be administered, and execution issued therefor as at law, and that defendants do surrender to the clerk and master of this Court said note for $750 and said counterpart within three calendar months after final decree in this cause, which, together with the

agreement exhibited in the bill, shall be by him cancelled, and that defendant be perpetually enjoined from executing said judgment on the law side of this Court. It is further decreed that defendants pay the costs of this suit, and the costs of said suit at law, and that execution issue therefor as at law"

"-- as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal, agreeably to the act of Congress in such case made and provided, fully and at large appears."

"And whereas, in the present term of January in the year of our Lord 1830, the said cause came on to be heard before the said Supreme Court on the said transcript of the record and was argued by counsel. On consideration whereof, it is ordered and decreed by the Court that the decree of the said circuit

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court in this cause be, and the same is hereby affirmed with costs. February 2, 1830."

"You therefore are hereby commanded that such execution and proceedings be had in said cause as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding."

In the circuit court, the proceedings on the mandate were the following.

"September 13, 1830. This cause came on this day and on a former day of this term to be heard before the Honorable John McLean and John McNairy, Judges, in presence of counsel on both sides, upon the mandamus from the Supreme Court affirming the decree formerly rendered in this court, and in obedience to said mandate it is ordered, adjudged, and decreed that the defendants pay the costs of the Supreme Court of the United States, and the costs of appeal, to be taxed by the clerk and master, and upon motion and petition of complainant, the cause is set down for further directions, and it is ordered that the clerk and master take an account of the assets of James Boyce, deceased, in the hands of the defendant,

Robert Boyce, to be administered, and make report, during this term, until the coming of which report other matters are reserved."

"And at the same term, to-wit, 1830."

" This cause came on for further directions, this 28 September, 1830, and upon the exceptions filed by the counsel for defendants to the report of the clerk and master, which report was made in pursuance of a decree rendered at a former day of this term, and is in the words and figures following, to-wit: "

" In obedience to the interlocutory order made in this cause at the present term, the clerk and master reports that it does not appear that any personal assets of James Boyce, deceased, came to the hands of said defendants as his executors, but it does appear, from the agreement between complainant and Robert Boyce, admitted to have been dated 23 May, 1823, and from the depositions of Thomas B. Reed, Isaac Caldwell, and James E. Gillespie that Robert Boyce has received for rents, previous to 1 January, 1824, the sum of $2,100. That interest on this sum, from 1 January, 1824, till 1 September, 1830 (at the rate of eight percentum per annum, the transaction having taken

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place in the State of Mississippi, where, by the pleadings in this cause, that is admitted to be the legal rate of interest), will amount to $1,120, amounting in all to $3,220. The above depositions of Reed, Gillespie and Caldwell, and said agreement are herewith produced as a part of this report. It appears from the answer of defendants that the land in controversy was devised by James Boyce, deceased, to one Richard Boyce, one of the defendants in this cause. All of which is respectfully submitted."

" And exceptions to said report being argued by counsel and fully understood by the court here, it is ordered, adjudged, and decreed that the exceptions to said report be overruled and that the report be confirmed except so far as relates to the interest on the sum of $2,100. It is further ordered, adjudged, and decreed that the complainant recover of Robert Boyce the said sum of $2,100, with interest from

this day, to be levied of his own proper goods and chattels, lands and tenements, and that, for the balance due the complainant, amounting to $496.46, with interest from this time, and also the aforementioned sum of $2,100, in case the same is not paid by the said Robert Boyce on or before the first Monday in March next, and the costs of this suit, that the complainant has a lien on the tract of land in the State of Mississippi in the pleadings mentioned, and is entitled to have the same sold to satisfy the above mentioned sums of money. It is further ordered, adjudged, and decreed that in case the said sums of money and costs of suit or any part thereof be unpaid on 1 March next, that in that case the said tract of land and appurtenances be exposed for sale at Natchez in the State of Mississippi by commissioners to be appointed by the clerk and master of this court on such credit as he may direct, forty days' notice of the time and place of sale being given in some public newspaper printed in Natchez. And it is further ordered, adjudged, and decreed in case of said sale that the defendants, Robert Boyce, as executor and administrator with the will annexed, and Richard Boyce, join in a deed or deeds to the purchaser or purchasers, under the direction of the clerk and master of this court, and it is further ordered that the clerk and master of this court make report of his proceedings to the next term of this court. "

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"The exceptions filed to the report of the clerk and master are in the words following, to-wit: "

" Defendants, by their counsel, except in manner following to the report of the clerk and master of this court in this cause."

" 1. It is not the fact, as stated by the said clerk and master, that the agreement between R. Boyce and F. Grundy, of date 23 May, 1823, admits, either on its face or by implication, that the said Robert Boyce had then or has now assets in his hands as executor of the last will and testament of James Boyce, deceased."

" 2. Defendants except to said report if by it, it is intended to render Robert Boyce liable as executor of James on the ground that he had assets in May, 1823,

because the same may have been long since paid away in discharge of debts due by the testator in his lifetime."

" 3. Defendant excepts to said report because it should have been stated that the agreement between R. Boyce and F. Grundy of May 23, 1823, was an agreement with said Boyce not as executor, but in his own individual capacity, and that said Boyce was acting merely as attorney in fact for said Grundy, and is responsible, if at all, in his individual capacity -- the collections to be made by said Boyce if the contract between James Boyce and said Grundy was rescinded to be, stand, and remain subject to future arrangements between said parties."

" For these and many other reasons to be assigned on argument, defendant's counsel pray that said report be recommitted to said clerk and master."

The defendants appealed to this Court.

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MR. JUSTICE STORY delivered the opinion of the Court.

This is an appeal from a decree of the Circuit Court for the District of west Tennessee, rendered upon a mandate directing that court to execute a former decree of this Court. The case, when formerly before this Court, will be found reported in 28 U. S. 3 Pet. 210, to which reference may therefore be had for a full statement of the facts.

The material facts are that the original plaintiff, Mr. Grundy, in 1823 brought his bill against Robert Boyce and Richard Boyce as executors of James Boyce deceased for the rescission of a contract for the sale of lands in the State of Mississippi stated in the bill, and for the repayment of the sums of money paid by the plaintiff on the contract, and for a perpetual injunction of a judgment obtained on the same contract. It appeared from the bill and answer that Robert Boyce alone was qualified as executor under this will, and the answer alleged that another and later will had been subsequently discovered by which the whole proceeds of the land in controversy were devised to Richard Boyce, who was appointed sole executor

thereof, but he renounced the executorship, and Robert Boyce was appointed administrator with the will annexed. Upon the hearing of the cause in the circuit court in August, 1826, it was among other things decreed that the contract stated in the bill be in all things rescinded and annulled and

"that the defendant, Robert, administrator of the goods, &c.;, of James Boyce, deceased, do pay the sum of $1,250, with legal interest thereon at the rate of eight percentum per annum, which appears to be the legal rate of interest in said State of Mississippi, from the said 5 July, 1818, until this day, making the sum of $2,065.28, to be levied of the goods, &c.;, of the said James in his hands, to be administered and execution issue therefor, as at law."

From this decree the defendants appealed to this (the Supreme) Court, and at the January term thereof, 1830, the decree of the circuit court was affirmed with costs, nothing being

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said as to any allowance of damages or interest. A mandate in the usual form was issued to the circuit court to carry the same into effect. At the September term of the circuit court, 1830, in obedience to the mandate, the circuit court ordered the cause to be set down for further directions, and it was referred to the clerk, as master, to take an account of the assets of James Boyce in the hands of the defendant, Robert Boyce, to be administered and to report thereon. The master made a report at the same term stating, in substance, that it did not appear that any personal assets of James Boyce came to the hands of the defendants as his executors, but that it did appear from the agreement between the plaintiff and the defendant, Robert Boyce, admitted to have been dated on 23 May, 1823, and returned with the report, and from certain depositions in the case, that Robert Boyce had received for rents, previous to 1 January, 1824, the sum of $2,100, and that the interest thereon, from 1 January, 1824, to 1 September, 1830, at the rate of eight percent, will amount to $1,120, making in all $3,220. The report also stated that the land in controversy was devised by James Boyce to the defendant, Richard Boyce.

Upon the coming in of the master's report, exceptions were filed by the defendant, Robert Boyce, and upon hearing the same they were overruled and the report was confirmed by the circuit court at the same term, except as to the $1,120. And thereupon the court decreed

"That the plaintiff recover of Robert Boyce the sum of $2,100, with interest from this day, to be levied of his own proper goods and chattels, &c.;, and that for the balance due the plaintiff, amounting to $496.46, with interest from this time, and also the aforementioned sum of $2,100, in case the same is not paid by the said Robert Boyce on or before the first Monday in March next, and the costs of suit, the plaintiff has a lien on the tract of land in the State of Mississippi in the pleadings mentioned, and is entitled to have the same sold to satisfy the above mentioned sums of money."

And it then proceeded to direct the time, manner, &c.;, of the sale.

It is from this decree that the present appeal is taken, and various objections to it have been insisted upon in the arguments at the bar. Some confusion arises in the case from the

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report of the master, he having stated in one part thereof that no assets came to the hands of the defendants as executors, and yet in another part having stated that the rents of the land in controversy had come to the hands of Robert Boyce, under an agreement between the plaintiff and Robert Boyce, without stating that they had come to his hands as assets, and were now to be deemed assets of James Boyce. If, under the agreement, these rents were received by Robert Boyce as agent of the plaintiff, and not as executor, it is very clear that in the present suit no decree could be had against him therefor, since he is sued only in his representative capacity as administrator, and therefore no decree could be rendered against him in his personal capacity. But if the rents, under the agreement, upon the rescission of the contract stated in the bill, and finally decreed thereon, became virtually the money of James Boyce, then they might be

properly deemed assets in the hands of the administrator, and as such liable to the execution of the plaintiff. And we are of opinion that under all the circumstances, the latter is the predicament in which they are to be viewed, and that the master ought to have reported the sum of $2,100 so received to be assets. And to this extent there is no objection to the decree of the circuit court.

A more important objection is that the decree is not rendered against the administrator as such, payable out of the assets in his hands to be administered or payable out of the said sum of $2,100 (the rents above stated), and if these assets are not sufficient, then out of the assets of his testator, *quando acciderent;* but the decree is personally against Robert Boyce for the said sum of $2,100, to be levied out of his own proper goods and chattels, &c.;, although no *devastavit* is either suggested or proved. We are of opinion that the decree is erroneous in this respect and that it ought to have been for the amount against the administrator in his representative character, to be levied of the assets of the testator in his hands, and as to the $2,100, if no such assets should be found, then (as upon a *devastavit*) against the proper goods of the administrator to the same amount, with costs. In no other way can the defendant, Robert Boyce, be protected by the payment in the course of his administration of the assets of the testator, for it will not otherwise judicially appear that the

rents were treated as assets. And besides, the decree will not otherwise conform to the capacities and rights of the parties according to the frame of the bill and the original decree.

Another objection is to that part of the decree which creates a lien upon the land in controversy, lying in another state, and decrees a sale for the discharge of the lien. We are of opinion that the decree is erroneous in this respect. In the first place, the court had no jurisdiction to decree a sale to be made of land lying in another state, by a master acting under its own authority. In the next place, the original decree, affirmed by the Supreme Court, which alone the circuit court was called upon to execute, created no such lien and authorized no such sale. The decree was

therefore, in both respects, not an execution of the former decree, but a new and enlarged decree. In the next place, the proper parties, the heirs at law or devisees, were not properly before the court, for though the master in his report states that Richard Boyce was, under the will, devisee of the lands in controversy, this was a matter extra-official, and not confided to the master by the reference to him, and if it had been, the bill itself was not framed so as to charge the devisee or seek relief against him personally, but only as representative of the deceased.

Another objection to the decree is that it decrees the sum of $496.46, intended, as is understood (though not so stated in the decree) as interest upon the original sum decreed in the circuit court, *viz.* $2,065.28, in 1826, from the time of the rendition thereof to the affirmance in the Supreme Court, in January term, 1830. We are of opinion that there is error also in this part of the decree. By the Judiciary Act of 1789, ch. 20, s. 23, the Supreme Court is authorized, in cases of affirmance of any judgment or decree, to award to the respondent just damages for his delay. And by the rules of the Supreme Court, made in February term, 1803, and February term, 1807, in cases where the suit is for mere delay, damages are to be awarded at the rate of ten percentum per annum on the amount of the judgment, to the time of the affirmance thereof. And in cases where there is a real controversy, the damages are to be at the rate of six percent per annum only. And in both cases the interest is to be computed as part of the damages. It is therefore solely for the decision

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of the Supreme Court whether any damages or interest (as a part thereof) are to be allowed or not in cases of affirmance. If upon the affirmance no allowance of interest or damages is made, it is equivalent to a denial of any interest or damages, and the circuit court, in carrying into effect the decree of affirmance, cannot enlarge the amount thereby decreed, but is limited to the mere execution of the decree in the terms in which it is expressed. A decree of the circuit court allowing interest in such a case is, to all intents and purposes, *quoad hoc,* a new decree, extending the former decree. In *Rose v. Himely,* 5 Cranch 313, it was said that upon an appeal from a mandate, nothing is before the court but the

proceedings subsequent to the mandate, and the Court refused to allow interest in that case, which was given by the circuit court in executing the mandate, because it was not awarded by the Supreme Court upon the first appeal. The same point was fully examined in the case of *The Santa Maria,* 10 Wheat. 431, 23 U. S. 442 , where the Court held that interest or damages could not be given by the circuit court in the execution of a mandate where the same had not been decreed by the Supreme Court upon the original appeal.

For these reasons, the decree of the circuit court must be

Reversed, and a new decree will be entered by this Court upon the principles stated in this opinion.

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 west Tennessee and was argued by counsel, on consideration whereof it is ordered, adjudged, and decreed that the decree of the circuit court, rendered upon the mandate aforesaid, be and hereby is reversed and annulled. And this Court, proceeding to render such decree as the circuit court ought to have rendered in the premises, does further order, adjudge, and decree as follows: that the said sum of $2,100, reported by the master as received for rents by the said Robert Boyce, under the agreement therein mentioned, ought, under all the circumstances of the case, to be deemed assets of the said James Boyce deceased, in his, the said Robert's hands, to be administered according to law, and that the same ought to be

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applied in a due course of administration to the payment of the debt of $2,065.28 in the original decree of the circuit court awarded to the plaintiff, and to the payment of the costs of the present suit, and it is therefore ordered, adjudged, and decreed that the same be so applied and paid by the said Robert, as administrator with the will annexed of the said James Boyce, accordingly. And it is further ordered, adjudged and decreed, that execution do issue against the said Robert Boyce, administrator as aforesaid, for the said debt of $2,065.28, and the costs of

the present suit, to be levied of the goods and chattels, &c.;, of the said James Boyce, in the hands of the said Robert, administrator as aforesaid, and if none such shall be found, then to be levied out of the proper goods and chattels, &c.;, of him, the said Robert.

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