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Livingston Vs. Story

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Appeal No. : 34 U.S. 632

Appellant : Livingston

Respondent : Story

Judgement :

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U.S. Supreme Court Livingston v. Story, 34 U.S. 9 Pet. 632 632 (1835)

Livingston v. Story

34 U.S. (9 Pet.) 632

APPEAL FROM THE DISTRICT COURT OF THE UNITED

STATES FOR THE EASTERN DISTRICT OF LOUISIANA

SYLLABUS

Louisiana. A bill of complaint was filed in the District Court of the United States for the Eastern District of Louisiana to set aside a conveyance made by the complainant of certain lots of ground in the City of New Orleans, and to be

restored to the possession of the same, alleging that the deed by which he, conveyed them was given on a contract for the loan of money, and that although in the form of a sale, it was given only as a pledge for the repayment of the money, and calling for an account of the rents and profits of the

property. The defendant demurred to the bill, and assigned for cause that the complainant, in the bill, had not made such a case as entitled him, in a court of the State of Louisiana, to any discovery touching the matters contained in the bill, nor to any relief in the district court. The ground of this demurrer was that the District Court of the United States of Louisiana, had no power to entertain proceedings and give relief in chancery.

The district court sustained the demurrer, and dismissed the bill. The decree of the district court was reversed.

Provisions of the laws of the United States establishing the courts of the United States in the District of Louisiana, and regulating the practice in those courts.

By the provisions of the acts of Congress, Louisiana, when she came into the union, had organized therein a district court of the United States, having the same jurisdiction, except as to appeal and writs of error, as the circuit courts of the United States in other states, and the modes of proceeding in that court were required to be according to the principles, rules, and usages which belong to courts of equity, as contradistinguished from courts of common law.

And whether there were or not, in the several states, courts of equity proceeding according to such principles and usages made no difference according to the construction uniformly given by this Court.

Congress has the power to establish circuit and district courts in any and all the states of the union and to confer on them equitable jurisdiction in cases coming within the Constitution. It falls within the express words of the Constitution.

The provisions of the act of Congress of 1824, relative to the practice of the courts of the United States in Louisiana, contain the descriptive term "civil actions," which

embraces cases at law and in equity, and may be fairly construed as used in contradistinction to criminal causes. They apply equally to cases in equity, and if there are any laws in Louisiana directing the mode of proceeding in equity causes, they are adopted by that act and will govern the practice in the courts of the United States.

If there are no equitable claims or rights cognizable in the courts of the State of Louisiana, nor any courts of equity, and no state laws regulating the practice in equity causes, the law of 1824 does not apply to a case of chancery jurisdiction, and the District Court of Louisiana was bound to adopt the antecedent modes of proceeding, authorized under the former acts of Congress.

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If any part of a bill in chancery is good, and entitles the complainant to relief or discovery, a demurrer to the whole bill cannot be sustained.

It is an established and universal rule of pleading in chancery that a defendant may meet a complainant's bill by several modes of defense. He may demur, answer, and plead to different parts of the bill, so that if a bill for a discovery contain proper matter for the one, and not for the other, the defendant should answer the proper and demur to the improper matter, and if he demurs to the whole bill, the demurrer must be overruled.

On 25 July, 1832, the appellant, Edward Livingston, filed a bill of complaint in the district court by his solicitors, stating that on or about 25 July, 1822, being in want of money, he applied to Benjamin Story and John A. Fort, of the City of New Orleans, who agreed to lend to him the sum of $22,936, of which a part only was paid in cash, part in a note of John A. Fort, and $8,000, parcel of the said sum, was agreed to be afterwards paid to one John Rust for the purpose and in the manner afterwards stated. To secure the repayment of the money and interest at the rate of eighteen percent per annum, he conveyed to Fort and Story certain property, with the improvements on the same, situated on the Batture in New Orleans, owned by him. When this property was so conveyed, Fort and Story

delivered to him a counterletter by which they agreed to reconvey the property to him on the payment of $25,000 (being the sum advanced and the interest) on 1 February then next, but if the same was not paid on that day, the property should be sold, and after paying the sum of $25,000 and the costs of sale, the residue should be repaid to him. At the time of the sale, the whole property was covered with an unfinished brick building, intended for fifteen stores, and a contract had been made with John Rust to finish the buildings for $8,000. Story agreed to pay the $8,000 to Rust, and this was with the interest at eighteen percent on it, a part of the $25,000 to be repaid on 1 February, 1823. The property was, at the time of the loan, worth $60,000, and is now worth double the sum.

Story and Fort took possession of the property, and the complainant went to New York on a visit, expecting the stores to

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be finished by his return, or that at least three of them would be in a condition to let, he having received an offer of rent for each of the three, which would have given a rate of interest equal to a principal of $10,000 each for the three smallest stores.

The complainant states that, on his return to New Orleans, he found little or nothing had been done to the stores; the $8,000 had been paid to John Rust, and if the property had been sold in February, it would not have produced anything like its value. He therefore applied to Fort and Story for a further time to pay the money borrowed, which they would not consent to, but on the following conditions: that the property should be advertised for sale on 2 June then next; that the sum due to them should be increased from $25,000 to $27,500, which sum was composed first of the said $25,000, secondly, of $1,500 for interest for the delay of four months, at eighteen percent, thirdly, $800 for auctioneer's commissions, of $50 for advertising, and of $200 arbitrarily added, without any designation; of which a memorandum was given by the said Fort and Story and is now ready to be produced, and that the counterletter so executed, as aforesaid, to him by the said Fort and Story should be annulled.

Being entirely at the mercy of Fort and Story, he was obliged to consent to these terms in hope of relief when money should become plenty; but on the contrary, the pressure became greater, and on 2 June, in order to obtain a delay of sixty days, he was forced to consent to sign a paper by which it was agreed that the debt should be augmented to the sum of $27,830.76, and that if the same was not paid on 5 August, then the property should belong to the said Fort and Story without any sale; but there was no clause by which he should be discharged from the payment of the sum so borrowed; as aforesaid, whereby he would have been liable to the payment of the sum so advanced in case the property had fallen in value.

On 5 August above mentioned, the said Fort and Story demanded, by a notary, the full sum of $27,830.76, which included the said charge of $800 for auctioneer's fees for selling, although no sale had been made,

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and all the other illegal charges above stated, and on nonpayment they protested for damages and interest on the sum, thereby showing their intent to hold the complainant responsible for the sum demanded, if the premises should, by any accident, become insufficient in value to pay the same.

Fort and Story remained in possession of the said premises until the death of the said John A. Fort, which took place some time in the year 1828, and after his death, the said Benjamin Story took the whole of the said property by some arrangement with the heirs of John A. Fort, and is now and ever since has been in the sole possession thereof, and the said John and Benjamin in the lifetime of the said John, and the said Benjamin, after the death of the said John, have received the rents and profits of the said property to the amount at least of $60,000.

The bill states that the complainant is advised and believes he has a right to ask and recover from the said Benjamin Story the possession of the said property, and an account of the rents and profits thereof, the conveyance of the same having been made on a contract for the loan of money, and although in the form of a sale,

was in reality only a pledge for the repayment of the same; the act by which the complainant agreed to dispense with the sale being void and of no effect in law.

The bill concludes as follows:

"And your orator prays that if on said account it shall appear that there is a balance due to him, as he hopes to be able to show will be the case, that the said Benjamin Story may be decreed to pay the same to him and to surrender the said property to him, and that if any balance be found due from your orator, that the said Benjamin Story may be decreed to deliver the said property to your orator on his paying or tendering to him the said balance, and that your orator may have such other relief as the nature of his case may require, and that the said Benjamin Story in his own right, and also as executor of the last will and testament of the said John A. Fort, or in any other manner representing the estate of the said John A. Fort, may be summoned to answer this bill, your orator averring that he is a citizen of the State of New York and that the said Benjamin Story is a citizen of the State of Louisiana, now residing in New Orleans. "

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Upon this bill a subpoena was issued directed to the marshal, commanding him to summon Benjamin Story to appear at the district court on the 3d Monday in February, 1834, "to answer a bill exhibited against him in the said court, together with certain interrogatories therewith filed by the complainants."

A subpoena was also issued in the same terms, directed to Benjamin Story executor of John A. Fort.

On 17 February, 1834, Benjamin Story came into court and by his solicitor, L. Pierce, Esq. filed the following demurrer.

"The defendant by protestation not confessing all or any of the matters and things in the complainant's bill to be true in such manner and form as the same are therein set forth and alleged, does demur to the said bill, and for cause of demurrer shows that the complainant has not by his said bill, made such a case as

entitles him, in a court of equity in this state, to any discovery from this defendant, touching the matters contained in the said bill, or any or either of such matters, nor entitles the said complainant to any relief in this court, touching any of the matters therein complained of. And for further cause of demurrer to said bill, he shows that by complainant's own showing, in the said bill, that the heir of John A. Fort, who is therein named, is a necessary party to the said bill, as much as it is therein stated that all the matters of which he complains, were transacted with this defendant, and John A. Fort, whose widow, the present Mrs. Luzenbourg, is the sole heir and residuary legatee, but yet the said complainant hath not made her party to the said bill, wherefore as before, and for all the above causes, and for divers other good causes of demurrer appearing in the said bill, this defendant does demur thereto, and he prays the judgment of this honorable court whether he shall be compelled to make any further and other answer to the said bill, and he humbly prays to be dismissed from hence, with his reasonable costs in this behalf sustained."

On 20 May, 1834, the district court, by a decree, sustained the demurrer, and ordered the bill of the complainant to be dismissed.

The complainant prosecuted this appeal.

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MR. JUSTICE THOMPSON delivered the opinion of the Court.

The appellant, Edward Livingston, filed his bill of complaint in the District Court of the United States for the Eastern District of Louisiana, against the appellee, Benjamin Story to set aside a conveyance made by him, of certain lots of land in the City of New Orleans and to be restored to the possession of said lots, alleging that the deed was given on a contract for the loan of money. Although in the form of a sale, it was in reality a pledge for the repayment of the money loaned, and calling for an account of the rents and profits of the property.

To this bill the defendant demurred, and the court sustained the demurrer and dismissed the complainant's bill, and the cause comes into this Court on appeal.

It will be enough for the purpose of disposing of the questions which have been made in this case to state only some of the leading facts which are set forth and stated in the bill.

The bill alleges that on or about 25 July, 1832, the defendant and John A. Fort loaned to him, the complainant, the sum of $22,936, to secure the payment of which, with interest at the rate of eighteen percent per annum, he conveyed to them a lot of ground in New Orleans, with the

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buildings and improvements thereon. That a counterletter or instrument was at the same time executed by the other parties, by which they stipulated to reconvey the property on certain conditions. That the lot was covered with fifteen stores in an unfinished state, and the object of the loan was to complete them. The property is stated to have been worth at that time $60,000, and is now worth double that sum. That the complainant, soon after the said transaction, left New Orleans, where he then resided, on a visit to the State of New York, expecting that during his absence some of the stores would have been finished, or in a state to let. That on his return, he found that Story and Fort had paid $8,000 to a contractor, who had failed to finish the buildings, the rent of each of the three smallest of which would be the interest of $10,000 a year when finished. A further time was requested for the payment of the money, which Story and Fort would not agree to, but upon condition that the property should be advertised for sale on a certain day named; that the sum due should be increased from $25,000 to $27,000, which sum was made up by adding to the $25,000 the following sums; $1,500 for interest for the delay of four months at eighteen percent; $800 for auctioneer's commissions; $50 for advertising, and $200 arbitrarily added without any designation, and that he, the complainant, should annul the counterletter given to him by Story and Fort.

"That the complainant, being entirely at the mercy of the said Story and Fort, consented to these terms in hopes of being able to relieve himself before the day fixed for the sale of his property, but being disappointed, he was on that day, in order to obtain a delay of sixty days, forced to consent to sign a paper, by which it

was agreed that the debt should be augmented to the sum of $27,830, and that if the same was not paid at the expiration of the sixty days, the property should belong to the said Fort and Story without any sale. The bill contains some other allegations of hardship and oppression, and alleges that the rents and profits of the property received by Fort and Story in the life time of Fort, and by Story since the death of Fort, amount, at least, to $60,000. The bill then prays that the said Benjamin Story may be cited to appeal to the bill of complaint, and answer the interrogatories therein propounded. "

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The defendant in the court below demurs to the whole bill, and for cause shows that the complainant has not by his said bill made such a case as entitles him, in a court of equity in this state, to any discovery from this defendant, touching the matters contained in the said bill, or any or either of such matters; nor to entitle the said complainant to any relief in this Court, touching any of the matters therein complained of. The want of proper parties is also assigned for cause of demurrer.

The court below did not notice the want of parties, but sustained the demurrer on the other causes assigned.

The argument addressed to this Court has been confined principally to the general question whether the District Court of the United States in Louisiana, has equity powers, and, if so, what are the modes of proceeding in the exercise of such powers. The great earnestness with which this power has been denied at the bar to the district court, may make it proper briefly to state the origin of the district court of that state, and the jurisdiction conferred upon it by the laws of the United States. When the Constitution was adopted, and the courts of the union organized, and their jurisdiction distributed, Louisiana formed no part of this union. It is not reasonable, therefore, to conclude that any phraseology has been adopted with a view to the peculiar local system of laws in that state. She was admitted into the union in the year 1812, and, by the act of Congress, passed for that purpose, 4 Laws U.S. 402, it is declared, that there shall be established a district court, to consist of one judge, to be called the district judge, who shall, in all things, have

and exercise the same jurisdiction and powers, which, by the act, the title whereof is in this section recited, were given to the district judge of the Territory of Orleans. By the act here referred to for the jurisdiction and powers of the court, 3 Laws U.S. 606, a district court is established, to consist of one judge; and it declares that he shall, in all things, have and exercise the same jurisdiction and powers which are by law given to, or may be exercised, by the judge of the Kentucky District. And, by the Judiciary Act of 1789, 2 Laws U.S. 60, it is declared, that the District Court in Kentucky shall, besides the jurisdiction given to other district courts, have jurisdiction of all other causes, except of appeals

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and writs of error, hereinafter made cognizable in a circuit court, and shall proceed therein in the same manner as a circuit court. And such manner of proceeding is pointed out by the Process Act of 1792, 2 Laws U.S. 299, which declares that the modes of proceeding in suits of common law, shall be the same as are now used in the said courts respectively, in pursuance of the act entitled, "an act to regulate process in the courts of the United States;" *viz.,* the same as are now used and allowed in the supreme courts of the respective states, 2 Laws U.S. 72; and in suits of equity, and those of admiralty and maritime jurisdiction, according to the principles, rules and usages which belong to courts of equity, and courts of admiralty respectively, as contradistinguished from courts of common law; subject to such alteration by the courts as may be thought expedient, &c.;

From this view of the acts of Congress, it will be seen that prior to the act of 1824, which will be noticed hereafter, Louisiana, when she came into the union, had organized therein a district court of the United States, having the same jurisdiction, except as to appeals and writs of error, as the circuit courts of the United States, in the other states. And that in the modes of proceeding, that court was required to proceed according to the principles, rules and usages which belong to courts of equity, as contradistinguished from courts of common law. And whether there were or not, in the several states, courts of equity proceeding according to such principles and usages, made no difference, according to the construction uniformly adopted by this Court.

In the case of *Robinson v. Campbell,* 3 Wheat. 222, it is said that in some states in the union, no court of chancery exists to administer equitable relief. In some of the states, courts of law recognize and enforce in suits at law all equitable claims and rights which a court of equity would recognize and enforce, and in others all relief is denied, and such equitable claims and rights are to be considered as mere nullities at law, and a construction, therefore, that would adopt the state practice in all its extent would at once extinguish in such states the exercise of equitable jurisdiction. That the acts of Congress have distinguished between remedies at common law and in equity, and that to effectuate the purposes of the

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legislature, the remedies in the courts of the United States are to be at common law or in equity, not according to the practice of the state courts, but according to the principles of common law and equity, as distinguished and defined in that country from which we derive our knowledge of those principles. So also in the case of *United States v. Howland,* 4 Wheat. 114, the bill was filed on the equity side of the Circuit Court of the United States in Massachusetts, in which state there was no court of chancery, and in answer to this objection, the Court says:

"As the courts of the union have a chancery jurisdiction in every state, and the Judiciary Act confers the same chancery powers on all, and gives the same rule of decision, its jurisdiction in Massachusetts must be the same as in other states."

That Congress has the power to establish circuit and district courts in any and all the states, and confer on them equitable jurisdiction in cases coming within the Constitution cannot admit of a doubt. It falls within the express words of the Constitution.

"The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may, from time to time, ordain and establish."

Article 3. And that the power to ordain and establish carries with it the power to prescribe and regulate the modes of proceeding in such courts admits of as little

doubt. And indeed upon no other ground can the appellee in this case claim the benefit of the act of 1824. Sessions Laws 56. The very title of that act is to regulate the mode of practice in the courts of the United States in the District of Louisiana, and it professes no more than to regulate the practice. It declares that the mode of proceeding in civil causes in the courts of the United States that now are or hereafter may be established in the State of Louisiana shall be conformable to the laws directing the mode of proceeding in the district courts of said state. And power is given to the judge of the United States court to make, by rule, such provisions as are necessary to adapt the laws of procedure in the state court, to the organization of the courts of the United States, so as to avoid any discrepancy, if any such should exist, between such state laws and the laws of the United States. The descriptive terms here used, "civil actions," are broad enough to embrace cases at

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law and in equity, and may very fairly be construed, as used in contradistinction to criminal causes. There are no restrictive or explanatory words employed, limiting the terms to actions at law. They apply equally to cases in equity, and if there are any laws in Louisiana directing the mode of procedure in equity causes, they are adopted by the act of 1824, and will govern the practice in the courts of the United States. But the question arises what is to be done if there are no equity state courts, nor any laws regulating the practice in equity causes. This question would seem to be answered by the cases already referred to, of *Robinson v. Campbell* and *United States v. Howland.* And also by the case of *Parsons v. Bedford,* 3 Pet. 444. In the latter case, the Court said

"That the course of proceeding under the state law of Louisiana could not, of itself, have any intrinsic force or obligation in the courts of the United States organized in that state, except so far as the act of 1824 adopted the state practice; that no absolute repeal was intended of the antecedent modes of proceeding authorized in the courts of the United States under the former acts of Congress."

If, then, as has been asserted at the bar, there are no equitable claims or rights recognized in that state, nor any courts of equity, nor state laws regulating the practice in equity causes, the law of 1824 does not apply to the case now before this Court, and the district court was bound to adopt the antecedent mode of proceeding authorized under the former acts of Congress; otherwise, as is said in the case of *Robinson v. Campbell,* the exercise of equitable jurisdiction would be extinguished in that state, because no equitable claims or rights which a court of equity would enforce are there recognized. And there being no court of equity in that state does not prevent the exercise of equity jurisdiction in the courts of the United States according to the doctrine of this Court in the case of the *United States v. Howland,* which arose in the State of Massachusetts, where there are no equity state courts. We have not been referred to any state law of Louisiana establishing any state practice in equity cases, nor to any rules adopted by the district judge in relation to such practice, and we have some reason to conclude that no such rules exist. For in a record now before

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us from that court, in the case of *Hiriart v. Ballon,* we find a set of rules purporting to have been adopted by the Court on 14 December, 1829, with the following caption:

"General rules for the government of the United States Court in the Eastern District of Louisiana in civil cases or suits at law, as contradistinguished from admiralty and equity cases, an criminal prosecutions, made in pursuance of the seventeenth section of the Judiciary Act of 1789, and of the first section of the Act of Congress of 26 May, 1824, entitled 'an act to regulate the mode of practice in the courts of the United States for the District of Louisiana.'"

And all other rules are annulled, and these rules relate to suits at law and in admiralty only, and not to suits in equity. From which it is reasonable to infer that the district judge did not consider the act of 1824 as extending to suits in equity, and if so, it is very certain that the demurrer ought to have been overruled. For, according to the ordinary mode of proceeding in courts of equity, the matters

stated in the bill are abundantly sufficient to entitle the complainant both to a discovery and relief, and by the demurrer, everything well set forth and which was necessary to support the demand in the bill must be taken to be true. 1 Ves.Sr. 426; 1 Ves.Jr. 289. And if any part of the bill is good and entitles the complainant either to relief or discovery, a demurrer to the whole bill cannot be sustained. It is an established and universal rule of pleading in chancery that a defendant may meet a complainant's bill by several modes of defense. He may demur, answer, and plead to different parts of a bill. So that if a bill for discovery and relief contains proper matter for the one, and not for the other, the defendant should answer the proper and demur to the improper matter. But if he demurs to the whole bill, the demurrer must be overruled. 5 Johns.Chan. 186; 1 Johns.Ca. 433.

But if we test this bill by any law of Louisiana which has been shown at the bar or that has fallen under our observation, the demurrer cannot be sustained. The objection founded on the alleged want of proper parties because the heir and

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residuary legatee of John A. Fort is not made a party, is not well founded. The bill states that in the year 1828, after the death of Fort, the defendant, Benjamin Story took the whole of the property, by some arrangement with the heirs of Fort, and that he ever since has been, and is now, in the sole possession thereof, and has received the rents and profits of the same. This fact the demurrer admits. Whereby Benjamin Story became the sole party in interest.

The causes of demurrer assigned are general; that the complainant has not, by his bill, made such a case as entitles him, in a court of equity in that state, either to a discovery or relief. In the argument at the bar, there has been no attempt to point out in what respect the bill is defective, either in form or substance, as to the discovery; if it is to be governed by the ordinary rules of pleading in a court of chancery. And if the objection rests upon the want of the right in the complainant to call upon the defendant for any discovery at all, the objection is not sustained even by the laws of Louisiana. But on the contrary, it is expressly provided by a law of that state that when any plaintiff shall wish to obtain a discovery from the

defendant on oath, such plaintiff may insert in his petition pertinent interrogatories, and may call upon the defendant to answer them on oath, and that the defendant shall distinctly answer to such interrogatories, provided they do not tend to charge him with any crime or offense against any penal law, neither of which has been pretended in this case. 2 Martin's Dig. 158.

Nor has it been attempted to point out in what respect the bill of complaint is defective, either in form or substance, as to the matters of relief prayed. In this respect also, the bill according to the ordinary course of proceeding in a court of chancery is unobjectionable, and indeed would be amply sufficient in the state courts under the law of Louisiana, which declares that all suits in the supreme court shall be commenced by petition, addressed to the court, which shall state the names of the parties, their places of residence, and the cause of action, with the necessary circumstances of places and dates, and shall conclude with a prayer for relief adapted to the circumstances of the case. 2 Martin's Dig. 148. These are the

essential requisites in an ordinary bill in chancery. It can certainly not be pretended that it is any objection in the case before us that the bill filed is called a "bill of complaint" instead of a "petition."

The sufficiency of the objections therefore must turn upon the general question whether the District Court of Louisiana has, by the Constitution and laws of the United States, the same equity powers as a circuit court of the United States has in the other states of the union, and we think it has been already shown that it has, but that, according to the provisions of the act of 1824, the mode of proceeding in the exercise of such powers, must be conformably to the laws directing the mode of practice in the district courts of that state, if any such exist, and according to such rules as may be established by the judge of the district court under the authority of the act of 1824. And if no such laws and rules applicable to the case exist in the State of Louisiana, then such equity powers must be exercised according to the principles, rules and usages of the circuit courts of the United States, as regulated and prescribed for the circuit courts in the other states of the

union.

The decree of the district court must, accordingly, be

Reversed and the cause sent back for further proceedings.

MR. JUSTICE Mc LEAN.

The inferior courts of the United States can only exercise jurisdiction under the laws of Congress, and a general law giving equity jurisdiction will apply as well to the courts of the United States in Louisiana, as in any other state in the union. The same may be said as to a general law regulating the exercise of a common law jurisdiction.

But, as it regards the courts of the United States in Louisiana, Congress has made an exception from the general law, by the act of 1824. This act provides,

"That the mode of proceeding in civil causes in the courts of the United States, that now are, or hereafter may be established in the State of Louisiana, shall be conformable to the laws directing the mode of practice in the district Court of the said state, provided that the judge of any such court of the United States may alter the times limited or allowed for different proceedings in the state

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courts, and make, by rule, such other provisions as may be necessary to adapt the said laws of procedure to the organization of such court of the United States, and to avoid any discrepancy, if any such should exist, between such state laws and the laws of the United States."

The proceedings in the state courts of Louisiana are conformable to the civil law, and the same course of proceeding under the above law, has been adopted in the district court of the United States in that state, and by the judgment of this Court, this course of practice has been sustained.

The above act applies to all civil causes, and, of course, embraces all causes both at common law and in chancery, and its provisions apply as forcibly to an equitable jurisdiction, as to one exercised in accordance with the rules of the common law. The peculiar mode of procedure under the Louisiana practice, preserves, substantially, the same forms in affording a remedy in all cases. And whether the ground of action be in the principles of the common law, or in the exercise of an equitable jurisdiction, by this mode of proceeding an adequate remedy is given.

In "an act further to regulate process in the courts of the United States," passed in 1828, and which provides for "proceedings in equity, according to the principles, rules and usages which belong to courts of equity," &c.;, it is declared that its provisions shall not be extended to any court of the United States in Louisiana.

No stronger legislative provision could have been adopted to show that Congress did not consider that the "principles, rules and usages which belong to courts of equity" were in force in that state. And this view was, in my opinion, correct, as the law of 1824 had made the federal court practice in Louisiana an exception to the general law on the subject.

If the principles, rules, and usages which belong to courts of equity, are to be regarded in the District Court of Louisiana, the same principle must adopt, in the same court, the rules and usages which belong to courts of common law. But the latter have been abrogated by the act of 1824, agreeably to the decision of this Court, and it appears to me, this decision must equally apply to the former. If the act of 1824 be

regarded, it must regulate the mode of proceeding in all civil causes, as contradistinguished from criminal ones.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Louisiana, and was argued by counsel, on consideration whereof it is ordered decreed by this Court that the

decree of the said district court in this cause be and the same is hereby reversed, and that this cause be and the same is hereby remanded to the said district court for further proceedings to be had therein, according to law and justice, and in conformity to the opinion and decree of this Court.

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