Packer Vs. Nixon

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Court : US Supreme Court

Decided On : 1836

Appeal No. : 35 U.S. 408

Appellant : Packer

Respondent : Nixon

Judgement :

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35 U.S. (10 Pet.) 408

ON CERTIFICATE OF DIVISION OF OPINION FROM THE CIRCUIT COURT

OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SYLLABUS

Questions respecting the practice of the circuit court in equity causes, which depend upon the exercise of the sound discretion of the court in the application of the rules which regulate the course of equity proceedings to the circumstances of

such particular case are not questions which can be certified on a division of opinion of the judges of the circuit court under the Act of 1802, chap. 32.

At January term, 1835, this case was before the Court, 34 U. S. 9 Pet. 483, on an appeal, and the decree of the circuit court was reversed, without a decision on the merits, for the purpose of amending the proceedings by entering an allegation of the domicile of the testator the construction of whose will was the subject of controversy, and introducing proof in relation thereto and also to allow the introduction of other parties claiming the estate of the testator.

After the coming in of the mandate of this Court, certain other proceedings took place in the circuit court; an amended bill was filed by the original complainant containing the allegation of domicile, which was considered necessary by the Supreme Court, and numerous petitions, to be allowed to become parties, were presented by other persons.

Among these, Janet Jones, and Mary Poole, filed their bill claiming the whole estate of the testator as heirs at law and next of kin of John Aspden of London, who they aver to have been heir at law of the testator, and as such entitled to his whole estate, real and personal, under his will.

John A. Brown also filed a bill claiming the whole personal estate of the testator as the administrator of John Aspden of London.

He took out letters of administration in Pennsylvania upon the estate of John Aspden as the attorney of the children of John Aspden of London.

Henry Nixon, the defendant, filed an answer to all these bills, and subsequently, under leave to amend his answer and plead, filed an amended answer with certain pleas thereunto annexed.

In these pleas he averred certain proceedings to have taken place in the Court of Chancery and Court of Exchequer in England in which he alleged, *inter alia,* that

Janet Jones and Mary Poole instituted those suits for the same subject matter and that John A. Brown's bill was in the same right and also for the same matter.

No affidavit was made to these pleas by the executor, as they were filed at the instance of the counsel of one of the parties in the execution of a purpose to allow all matters which were claimed as important to the full consideration and proceedings in the case to be brought forward and exhibited for the consideration of the court.

On 14 November, 1835, the counsel for Mrs. Poole and Mrs. Jones and the counsel for John A. Brown, administrator of John Aspden of London moved for a rule to show cause why the pleas in bar should not be stricken off as containing averments of matter *in pais* not verified by affidavit.

On the same day, the counsel for John Aspden of Lancashire moved for a rule on Mrs. Poole and Mrs. Jones, and on John A. Brown, administrator of John Aspden of London, to show cause why they should not be required to elect on which bill or petition they will proceed, and to abide by the one elected and abandon the other.

On 6 January, 1836, on the hearing of these motions, the following questions occurred upon which the opinions of the judges were opposed:

1st. Whether it is necessary that an affidavit be made to the pleas in bar to the petition of John A. Brown, or to any part thereof, and if so, to what part?

2d. Whether the rule moved for by Mr. Ingersoll and Mr. Sergeant on 14 November, 1835, in the following words:

"Mr. Sergeant, for John Aspden of Lancashire, moves for a rule on Mrs. Poole and Mrs. Jones, and on John A. Brown, administrator of John Aspden of London, to show cause why they should not be required to elect on which petition or bill they will proceed, and to abide by the one elected and abandon the other; Mr. J. R. Ingersoll, for the executor Mr. Nixon, makes the same motion as Mr. Sergeant"

ought to be granted or not.

"And the said judges being so opposed in opinion upon the questions aforesaid, the same were then and there, at the request of Mr. Ingersoll, counsel for Henry Nixon, and Mr. Sergeant, counsel for John Aspden of Lancashire, stated under the direction of the judges, and

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ordered to be certified under the seal of the court to the Supreme Court at their next session to be held thereafter, to be finally decided by the said Supreme Court."

MR. JUSTICE STORY delivered the opinion of the Court.

This was the case of certificate of division of opinion from the Circuit Court for the District of Pennsylvania, certified to this Court under the Act of Congress of 29 April, 1802, ch. 32, sec. 6.

The case was formerly before this Court, and the decision will be found reported under the name of *Harrison v. Henry Nixon,* in 9 Pet. 483. Upon the mandate in that case being returned to the circuit court, further proceedings were had in conformity thereto, and in the course of those proceedings the questions now propounded to this Court upon the certificate arose. They are as follows:

1. Whether it is necessary that an affidavit be made to the pleas in bar to the petition of John A. Brown, or to any part thereof, and if so, to what part?

2. Whether the rule moved for by Mr. Ingersoll and Mr. Sergeant on 14 November, 1835, in the following words:

"Mr. Sergeant, for John Aspden of Lancashire, moves for a rule on Mrs. Poole, and Mrs. Jones, and on John A. Brown, administrator of John Aspden of London, to show cause why they should not be required to elect on which petition or bill they will proceed, and to abide by the election and abandon the other: Mr. J. R. Ingersoll, for the executor Mr. Nixon, makes the same motion as Mr. Sergeant."

ought to be granted?

We are of opinion that the questions are not of such a nature as are contemplated to be certified to this Court under the Act of 1802, ch. 32. They are questions respecting the practice of the court in equity

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causes, and depend upon the exercise of the sound discretion of the court in the application of the rules which regulate the course of equity proceedings to the circumstances of each particular case. But it is to be understood that in the present case, this general discretion is subject to the former order of this Court in regard to the making of parties, and other proceedings contained in the mandate when the cause was remanded at the last January term of this Court, as stated in 34 U. S. 9 Pet. 540.

We shall accordingly direct this opinion to be certified to the circuit court.

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 Pennsylvania, and on a certificate of division in opinion between the judges of the said circuit court upon the following questions: *viz.,* 1st, whether it is necessary that an affidavit be made to the pleas in bar to the petition of John A. Brown, or to any part thereof, and if so to what part? 2d, whether the rule moved for by Mr. Ingersoll and Mr. Sergeant on 14 November, 1835, in the following words:

"Mr. Sergeant, for John Aspden of Lancashire, moves for a rule on Mrs. Poole and Mrs. Jones, and on John A. Brown, administrator of John Aspden of London, to show cause why they should not be required to elect on which petition or bill they will proceed, and to abide by the one elected and abandon the other; Mr. J. R. Ingersoll, for the executor Mr. Nixon, makes the same motion as Mr. Sergeant."

And these questions were argued by counsel, on consideration whereof it is the opinion of this Court that neither of these questions is of such a nature as are contemplated to be certified to this Court under the Act of 29 April, 1802, ch. 32. That they are questions respecting the practice of the court in the application of the general rules which regulate the course of equity proceedings to the

circumstances of each particular case, and therefore this Court has no jurisdiction to answer the same. But it is to be understood that in the present case this general discretion is subject to the former order of this Court in regard to the making of parties, and other proceedings contained in the mandate, when the cause was remanded at the last January term of this Court. It is therefore ordered and adjudged that this opinion be certified to the said circuit court and that the cause be remanded for further proceedings.