

Clarke Vs. Mathewson

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Decided On : 1838

Appeal No. : 37 U.S. 164

Appellant : Clarke

Respondent : Mathewson

Judgement :

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Clarke v. Mathewson

37 U.S. (12 Pet.) 164

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF RHODE ISLAND

SYLLABUS

A bill was filed by W., a citizen of Connecticut, against M. and others, citizens of Rhode Island, in the Circuit Court of the United States for the District of Rhode Island. An answer was put in to the bill and the cause was referred to a master for

an account. Pending these proceedings, the complainant died, and administration of his effects was granted to C., a citizen of Rhode Island, who filed a bill of reviver in the circuit court. The laws of Rhode Island do not permit a person residing out of the state to take out administration of the effects of a deceased person within the state, and make such administration indispensable to the prosecution and defense of any suit in the state, in right of the estate of the deceased. *Held* that the bill of reviver was in no just sense an original suit, but was a mere continuation of the original suit. The parties to the original suit were citizens of different states, and the jurisdiction of the court completely attached to the controversy. Having so attached, it could not be divested by any subsequent proceedings, and the Circuit Court of Rhode Island has rightful authority to proceed to its final determination.

If, after the proper commencement of a suit in the circuit court, the plaintiff removes into and becomes a citizen of the same state with the defendant, the jurisdiction of the circuit court over the cause is not affected by such change of domicile.

The cases of [*Morgan's Heirs v. Morgan*](#), 2 Wheat. 290, 4 Cond. 320; and [*Mollan v. Torrance*](#), 9 Wheat. 537, 5 Cond. 666, and [*Dunn v. Clarke*](#), 8 Pet. 1, cited.

The death of a party pending a suit does not, where the cause of action survives, amount to a determination of the suit. It might, in suits at common law, upon the mere principles of that law have produced an abatement of the suit, which would have destroyed it. But in courts of equity, an abatement of the suit by the death of the party has always been held to have a very different effect, for such abatement amounts to a mere suspension, and not to a determination of the suit. It may again be put in motion by a bill of reviver, and the proceedings being revived, the court proceeds to its determination as an original bill.

A bill of reviver is not the commencement of a new suit, but is the mere continuance of the old suit. It is upon ground somewhat analogous that the circuit courts are held to have jurisdiction in cases of cross-bills and injunction bills touching suits and judgments already in those courts.

In the 31st section of the Judiciary Act of 1789, Congress manifestly treats the revival of a suit by or against the representatives of the deceased party as a matter of right, and as a mere continuance of the original suit, without any distinction as to the citizenship of the representative, whether he belongs to the same state where the cause is depending or to another state.

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Willard W. Wetmore, a citizen of Connecticut, filed a bill to June term, 1830, of the Circuit Court of the District of Rhode Island against Henry Mathewson, Cyrus Butler, Edward Carrington, and Samuel Wetmore, citizens of the State of Rhode Island, claiming an account of certain mercantile adventures in which he alleged himself to have been interested, together with the books, invoices, and list of passengers on board of the ship *Superior*, in which he asserted he was interested, and for a full settlement of all accounts between him and the defendants, and for such other and further relief in the premises as the court might think proper.

The separate answer of Henry Mathewson to the complainant's bill was filed in September, 1830, the answers of the other defendants having been filed in June or July of the same year.

A supplemental answer was afterwards filed by Henry Mathewson, and in November, 1831, after various pleadings in the case, counsel having been heard, the cause was referred to a master to take and state an account between the parties, &c.; The parties appeared before the master and his assistants, and an examination of the accounts was had and proceeded in.

In 1834, before a report was made by the master, Willard W. Wetmore died, and administration of his estate and effects was granted by and out of the Municipal Court of the City of Providence in the State of Rhode Island to John H. Clarke, a citizen of that state, who thereupon filed a bill in the circuit court to revive the suit and prayed that the same should stand in the same situation as at the decease of the original complainant, Willard W. Wetmore.

On 7 July, 1834, Henry Matthewson appeared in the circuit court, denied the jurisdiction of the court, and moved to dismiss the suit on the ground that John H. Clarke was a citizen of the State of Rhode Island, as were also the defendants. At November term, 1835, the circuit court dismissed the bill for want of jurisdiction, and the complainant appealed to this Court.

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MR. JUSTICE STORY delivered the opinion of the Court.

The original cause was a bill in equity brought by Willard W. Wetmore, deceased, a citizen of Connecticut, against the defendants, Henry Mathewson and others, all citizens of Rhode Island, for an account upon certain transactions set forth in the bill, and with a prayer for general relief. After the cause was at issue upon the hearing, it was, by agreement of the parties, ordered by the court to be referred to a master to take an account, and pending the proceedings before the master, the intestate died. Administration upon his estate was duly taken out by the present plaintiff, John H. Clarke, in the State of Rhode Island, the laws of Rhode Island requiring that no person not a resident of the state should take out letters of administration, and also making such administration indispensable to the prosecution and defense of any suit in the state in right of the estate of the intestate.

Clarke filed a bill of revivor in the circuit court in June, 1834, in which he alleged himself to be a citizen of Rhode Island and administrator of Wetmore, against the defendants, who he alleged also to be citizens of the same state. So that it was apparent upon the face of the record that the bill of revivor was between citizens of the same state. Upon motion of the defendants at the November term of the circuit court, A.D. 1835, the court ordered the bill of revivor to be dismissed for want of jurisdiction, and from this decretal order the present appeal has been taken by the appellant.

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The case, as it was decided in the circuit court, is reported in 2 Sumner 262, 268, and the ground of dismissal was that the bill of revivor was a suit between citizens of the same state. The Judiciary Act of 1789, ch. 20, sec. 11, confers original jurisdiction upon the circuit courts of all suits of a civil nature at common law and in equity where the matter in dispute exceeds the sum or value of five hundred dollars and the United States are plaintiffs or petitioners, or an alien is a party, or the suit is between a citizen of the state where the suit is brought and a citizen of another state. If, therefore, the present had been an original bill brought between the present parties, it is clear that it could not have been maintained, for although the plaintiff could sue in *autre droit*, and as administrator of a citizen of another state, yet the suit would be deemed a controversy between him and the defendants, and not between his intestate and the defendants. This is the necessary result of the doctrine held by this Court in, [Chappedelaine v. Decheneaux](#), 4 Cranch 306, and [Childress v. Emory](#), 8 Wheat. 642.

The circuit court treated the present case as falling within the same predicament. In this we are of opinion that the court erred. The bill of revivor was in no just sense an original suit, but was a mere continuation of the original suit. The parties to the original bill were citizens of different states, and the jurisdiction of the court completely attached to the controversy; having so attached, it could not be divested by any subsequent events, and the court had a rightful authority to proceed to a final determination of it. If, after the commencement of the suit, the original plaintiff had removed into and become a citizen of Rhode Island, the jurisdiction over the cause, would not have been divested by such change of domicile. So it was held by this Court in [Morgan's Heirs v. Morgan](#), 2 Wheat. 290, [15 U. S. 297](#) , and [Mollan v. Torrance](#), 9 Wheat. 537, and [Dunn v. Clarke](#), 8 Pet. 1.

The death of either party pending the suit does not, where the cause of action survives, amount to a determination of the suit. It might in suits at common law, upon the mere principles of that law, have produced an abatement of the suit, which would have destroyed it. But in courts of equity, an abatement of the suit, by the death of a party, has always been held to have a very different effect, for such

abatement amounts to a mere suspension, and not to a determination of, the suit. It may again be put in motion by a bill of revivor, and the proceedings being revived, the cause proceeds to its

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regular determination as an original bill. The bill of revivor is not the commencement of a new suit, but is the mere continuation of the old suit. It is upon a ground somewhat analogous that the circuit courts are held to have jurisdiction in cases of cross-bills and injunction bills touching suits and judgments already in those courts, for such bills are treated not strictly as original bills, but as supplementary or dependent bills, and so properly within the reach of the court, although the defendant (who was plaintiff in the original suit) lives out of the jurisdiction. A very strong application of the doctrine is to be found in the case of [Dunn v. Clarke](#), 8 Pet. 1, where an injunction bill was sustained although all the parties were citizens of the same state, the original judgment, under which the defendant in the injunction bill made title as the representative in the realty of the deceased, having been obtained by a citizen of another state in the same circuit court.

But if any doubt could upon general principles be entertained upon this subject, we think it entirely removed by the 31st section of the Judiciary Act of 1789, ch. 20. That section provides that where, in any suit pending in the courts of the United States, either of the parties shall die before final judgment, the executor or administrator of such deceased party, who was plaintiff, petitioner or defendant, in case the cause of action doth by law survive, shall have full power to prosecute or defend any such suit or action until final judgment, and that the defendant shall be obliged to answer thereto accordingly, and the court before whom the cause is depending is empowered and directed to hear and determine the same and to render judgment for or against the executor or administrator, as the case may require. Other auxiliary provisions are made to carry this enactment into effect. Now in this section Congress manifestly treat the revivor of the suit by or against the representative of the deceased as a matter of right, and as a mere continuation of the original suit, without any distinction as to the citizenship of the

representative, whether he belongs to the same state where the cause is depending or to another state. Of the competency of Congress to pass such an enactment under the Constitution no doubt is entertained. The present case falls directly within its purview, and we are therefore of opinion that the decree of the circuit court dismissing the bill of revivor ought to be

Reversed and the cause remanded to the circuit court for further proceedings.

I take this opportunity of adding that I fully concur in all the

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reasoning of this Court on this subject. After the decision had been made in the circuit court, upon more mature reflection I changed my original opinion, and upon my expressing it in the circuit court, and upon the suggestion of the judges of that court, the case has been brought here for a final determination. I hope that I shall always have the candor to acknowledge my errors in a public manner whenever I have become convinced of them.

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 Rhode Island and was argued by counsel. On consideration whereof it is now hereby ordered, adjudged, and decreed by this Court that the decree of the said circuit court dismissing the bill of revivor in the cause ought to be and the same is hereby reversed, and that this cause be and the same is hereby remanded to the said circuit court for further proceedings to be had therein in conformity to the opinion of this Court and according to law.