

Levy Vs. Arrendondo

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Court : US Supreme Court

Decided On : 1838

Appeal No. : 37 U.S. 218

Appellant : Levy

Respondent : Arrendondo

Judgement :

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APPEAL FROM THE COURT

OF APPEALS OF FLORIDA

SYLLABUS

In the Superior Court of East Florida, the complainant filed a bill claiming compensation for the nonperformance of certain contracts for the sale of lands in East Florida, referring to the contracts, the contents of which are stated to be set

out in the bill of the complainant, which was replied to by the defendants. The contracts were not proved in the cause by testimony, nor was the nonproduction of them duly accounted for, on secondary evidence of the contents thereof as far as practicable, given before the superior court. The Supreme Court, for this defect and imperfection in the proceedings, had not sufficient evidence before them to found any final and satisfactory decree. The decree of the Court of Appeals of East Florida, and the decree of the Superior Court of East Florida, was therefore reversed, and the cause remanded to the Court of Appeals, to allow the pleadings to be amended, and the documents referred to, or the contents of the same, to be duly authenticated and proved, &c.;

The Court has had this case under frequent consultation since the argument of it, and, as there is much diversity of opinion among the judges, in regard to the effect which the contract of 22 January, 1822, between the complainant and Fernando M. Arredondo, Jr., and also in regard to the effect which the contract of 13 July, 1824, between the complainant and Joseph M. Arredondo, would have upon the rights and equities of the parties, and it being considered, from the manner the complainant has set out those contracts in his bill, and from the manner they are replied to by the defendant, Arredondo, that they are substantially exhibits in the

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cause, which should have been annexed by the complainant to his bill, and which the Superior Court of the Eastern District of Florida might have called for before it proceeded to make any decree in the cause; it is determined by this Court, without giving any opinion upon the decision of the Court of Appeals of Florida in the cause, to reverse that decree, and also to reverse the decree of the Superior Court of East Florida, in the cause upon which it was carried up by appeal to the Court of Appeals, and both of the same are hereby reversed, and the court remands the cause for further proceedings, making it obligatory upon the complainant to produce, on the trial, the contracts of 22 January, 1822, and that of 13 July, 1824, or satisfactorily to account for the same: with liberty to the parties in the cause to use, on such trial, the evidence already taken, and to adduce such other evidence as either may offer in proof of their respective equities; and to amend their bills

and answers, including any answer which the defendant, Entralgo, may offer to make to the complainant's bill upon such terms as the court below may impose, upon any application made by Entralgo or his counsel to set aside the order, *pro confesso*, against him.

This cause came on to be heard on the transcript of the record from the Court of Appeals for the Territory of Florida, and was argued by counsel. On consideration whereof, it is the opinion of this Court that the contract of 22 January, 1822, between the complainant and F. M. Arredondo, Jr., and also the contract of 13 July, 1824, between the complainant and F. M. Arredondo, from the manner in which they are set out in the bill of complainant and replied to by the defendant, are such exhibits as ought to have been annexed by the complainant to his bill in the Superior Court for the District of East Florida, and ought to have been proved as evidence in the cause, or the nonproduction thereof duly accounted for, and secondary evidence of the contents thereof, as far as practicable, given, before the Superior Court of the Territory of Florida proceeded to render any decree in the premises; that for this defect and imperfection in the proceedings, this Court have not sufficient materials before them whereon to found any final and satisfactory decree, and that justice requires that the cause should be opened in the court below for further proofs, as well in regard to the documents aforesaid, as in regard to any other evidence which may further establish the merits of the case on either side. It is therefore ordered, adjudged,

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and decreed by this Court, that the decree of the said Court of Appeals of the Territory of Florida, and also the decree of the superior court of the said territory be, and they are hereby reversed and annulled. And it is further ordered, adjudged, and decreed by this Court that the cause be remanded to the said court of appeals, with directions to allow the pleadings in the said cause to be amended by the parties; the documents aforesaid, or the contents thereof, to be duly authenticated and proved, and such other proceedings in the cause to be had as to justice and equity shall appertain. And the said court of appeals is either to cause such further proceedings aforesaid to be had before itself, or the cause

remanded to the said superior court for the same purposes, as the one or the other course may be proper, or may be required by the constitution of the said courts, and the laws and practice appertaining thereto. And it is also decreed that each party pay his own costs in this Court.

MR. JUSTICE BALDWIN dissented.

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