

**Ex Parte Story Vs. Story**

**Ex Parte Story Vs. Story**

**SooperKanoon Citation :** [sooperkanoon.com/79622](http://sooperkanoon.com/79622)

**Court :** US Supreme Court

**Decided On :** 1838

**Appeal No. :** 37 U.S. 339

**Appellant :** Ex Parte Story

**Respondent :** Story

**Judgement :**

Ex Parte Story v. Story - 37 U.S. 339 (1838)

U.S. Supreme Court Ex Parte Story v. Story, 37 U.S. 12 Pet. 339 339 (1838)

**Ex Parte Story v. Story**

**37 U.S. (12 Pet.) 339**

## **SYLLABUS**

A bill of exceptions is altogether unknown in chancery practice, nor is a court of chancery bound to inscribe in an order book, upon the application of one of the parties, an order which it may pass in a case before it.

The court refused to award a mandamus to the district judge of the District of Louisiana commanding him to sign a bill of exceptions tendered to him, and to command him to have inscribed, by the clerk of the court, on the order book of the

court, an order passed by him, in a case which was before him under a mandate from the Supreme Court of the United States, requiring him to do and to have done certain matters to carry into effect the decree of the Supreme Court, in a case which had been brought before the Court of Appeal from the District of Louisiana.

At the time when a decree was made in the District Court of Louisiana in a case before it, the complainant was dead. The executrix was afterwards admitted by the district court to become a party to the suit, and prosecuted an appeal to the Supreme Court, where the decree of the district court was reversed on the merits, and the case was sent back to the district court on a mandate, requiring the decree of the Supreme Court to be carried into effect. The decease of the plaintiff before the decree, and his having left other heirs besides the executrix, was offered, in the form of a supplemental answer to the original bill, to the district court, when acting under the mandate of the Supreme Court, to show error in the proceedings of that court, with a view to bring the case again before the Supreme Court, in order to have a reexamination and a reversal of the decree of the court. The district court refused to permit the evidence of the matters alleged to be entered on the records of the court or to sign a bill of exceptions, stating that the same had been offered. The Court said, in the case of [\*Skillern's Executors v. Mays Executors\*](#), 6 Cranch 267, it was said

"as it appeared that the merits of the case had been finally decided in this Court, and that its mandate required only the execution of the decree, the circuit court was bound to carry that decree into execution, although the jurisdiction of the court was not alleged in the pleadings."

In the case now before the court, the merits of the controversy were finally decided by this Court, and its mandate to the district court required only, the execution of the decree. On the authority of this case, the refusal to allow the defendant to file a supplemental answer and plea, was sustained.

The case of Louise Livingston, executrix of Edward Livingston, deceased, was before this Court at the January term, 1837, on the appeal of Mrs. Livingston, as

administratrix, against Benjamin Story from the District Court of the United States for the Eastern District of Louisiana. [36 U. S. 11](#) Pet. 351.

Page 37 U. S. 340

The decree of the District Court of Louisiana was reversed and the case was sent back to that court on a special mandate from this Court.

Page 37 U. S. 341

MR. JUSTICE TANEY delivered the opinion of the Court.

In this case, a mandamus has been moved for on behalf of Benjamin Story to the Circuit Court for the Ninth Circuit for the Eastern District of Louisiana.

The facts in the case are as follow:

Edward Livingston, in his

Page 37 U. S. 342

lifetime, filed a bill on the equity side of the District Court for the Eastern District of Louisiana, against Benjamin Story, and at the hearing of the cause, the court decided against the complainant and dismissed the bill. This decree was passed June 3, 1836. On 1 October, 1836, Louise Livingston filed a petition in the district court, stating that Edward Livingston had died after the suit was decided, and had by his will appointed her sole executrix, and praying leave to make herself a party, in order to appeal to this Court. A copy of the will of Edward Livingston was filed with this petition by which it appeared that she was the sole executrix. Louise Livingston was accordingly permitted to become a party, and by her solicitor, appeared in the district court as complainant in the character of executrix, and appealed to this Court; where the cause was heard at January term, 1837, and the decree of the district court reversed, and the case sent back, with a mandate from this Court to the court below, directing the further proceedings to be had in that court.

It appears by the petition for the mandamus (which is verified by affidavit) and by the copy of the record from the court below which accompanies it that the mandate from this Court was filed in the district court March 2, 1837, and proceedings were accordingly had under the orders of the district court to carry into execution the directions contained in the mandate. Afterwards, the case having been transferred to the circuit court under the act of Congress creating additional circuits, the defendant, on 20 November, 1837, obtained a rule on the complainant to show cause why the bill should not be dismissed or the suit abated upon the ground that Edward Livingston, the complainant in the original bill, died before the hearing and decree in the district court in 1836, and also because the suit had not been regularly revived by his executrix, the present complainant, and could not be revived inasmuch as she claimed as devisee. On 18 December, 1837, the rule above-mentioned was discharged and the testimony offered to prove the facts alleged as the foundation of the rule rejected by the court. The defendant, on the day last mentioned, further moved that he be permitted to give evidence that Edward Livingston had left other heirs besides Mrs. Louise Livingston, which motion was also overruled by the court.

The defendant thereupon tendered a bill of exceptions to these opinions, but the court refused to sign it. The defendant afterwards prayed leave to file "a supplemental answer and plea" in

Page 37 U. S. 343

which he averred that Edward Livingston, the original complainant, died on 23 May, 1836, which was some days before the decree of the district court dismissing his bill, and also averred that he left a daughter who was still living and had an interest in the subject matter in controversy, and plead the death of said Edward Livingston in abatement of the proceedings, and further insisted that the suit had never been revived by Louise Livingston, who appears as complainant, and that the daughter of Edward Livingston was a necessary party and that the court could not entertain jurisdiction because she was not a party. The court refused to receive this answer or to permit it to be filed. The defendant thereupon tendered another bill of exceptions, which the court refused to sign. The defendant then moved the

court to direct the clerk to state the facts upon the order book, but the court refused to suffer any notice to be taken on the record of this proposition to file the supplemental answer and plea, and a mandamus is now moved for to compel the judge to sign the exceptions, and to correct the record so as to make the answer which defendant proposed to file and the refusal of the court to receive it appear on the record as a part of the proceedings.

We think there is no sufficient grounds for this application. A bill of exceptions is altogether unknown in chancery practice; nor is a court of chancery bound to inscribe in an order book, upon the application of one of the parties, an order which it may pass in a case before it, and the facts which the defendant stated in the supplemental answer and plea which he offered furnished no ground of defense in the circuit court when acting under the mandate of this Court and carrying its directions into execution. In the case of [Skillern's Executors v. May's Executors](#), 6 Cranch 267, this Court said that as it appeared that the merits of the case had been finally decided in this Court, and that its mandate required only the execution of its decree, the circuit court was bound to carry that decree into execution although the jurisdiction of the court was not alleged in the pleadings. In the case now before the Court, the merits of the controversy were finally decided by this Court and its mandate to the district court required only the execution of its decree. The case therefore comes within the principle of *Skillern's Executors v. May's Executors*, and the facts stated by the defendant cannot, in this stage of the proceedings, form any defense against the execution of the mandate, and consequently he was not deprived of any legal

Page 37 U. S. 344

or equitable ground of defense by the refusal of the court to suffer him to file the supplemental answer and plea which he offered.

The motion for the rule to show cause is therefore

*Refused.*

On motion for a mandamus to the judge of the Circuit Court of the United States for the Eastern District of Louisiana. On consideration of the motion made in this case by Mr. Crittenden, on a prior day of the present term of this Court, to-wit: on Saturday, 17 February, A.D. 1838, for a writ of mandamus in the nature of a writ of procedendo to compel the judge of the Circuit Court of the United States for the Eastern District of Louisiana to sign the bill of exceptions tendered to him by the counsel for the appellee in this cause and to permit the record of the case "to speak the truth" and of the arguments of counsel thereupon had as well in support of as against the motion, it is now here ordered and adjudged by this Court that the said motion be, and the same is hereby overruled.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**