

Randolph Vs. Barrett

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Court : US Supreme Court

Decided On : 1842

Appeal No. : 41 U.S. 138

Appellant : Randolph

Respondent : Barrett

Judgement :

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Randolph v. Barrett

41 U.S. (16 Pet.) 138

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

SYLLABUS

Amendment. The defendant, in the Circuit Court of Mississippi, was sued and declared against as the administrator of Algernon S. Randolph. He entered his appearance to the suit, and in person filed a plea in abatement averring that he

was not administrator of Algernon S. Randolph and that he was the only executor of Algernon S. Randolph. The plaintiff moved to amend the writ and the declaration, by striking out "administrator," &c.;, and inserting "executor." Leave was granted, and the amendment was made. *Held* that there was no error in the circuit court in giving leave to amend.

The power of the circuit court to authorize amendments when there is anything in the record to amend by is undoubted. In this case, the defendant admitted by his plea that he was the person liable to the suit of the plaintiff, but averred that he was executor, and not administrator. Whether he acted in one character or the other, he held the assets of the testator or intestate in trust for the creditors, and when his plea was filed, it became part of the record and furnished matter by which the pleadings might be amended.

This amendment is not only authorized by the ordinary rules of amendment, but also by the statute of the United States of 1789, sec. 32.

A summons was issued in the Southern District of Mississippi to John H. Randolph stating him to be the administrator of Algernon S. Randolph deceased, to answer the defendant in error, Israel Barrett, the administrator of Joel F. Randolph of a plea of trespass on the case, returnable to May term 1839. To this writ the marshal returned, "Executed personally on J. H. Randolph April 23 1839."

The plaintiff below, on issuing the writ, filed a declaration against John H. Randolph as administrator of Algernon S. Randolph deceased, for acceptances of bills of exchange, for the use of the plaintiff's intestate, for money paid, laid out and expended, and on an account stated amounting to the sum of \$5,000 and upwards. On 26 April 1839, John H. Randolph having appeared to the action, filed the following plea:

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"The said John H. Randolph comes and defends, &c.;, when, &c.;, and prays judgment of the plaintiff's writ and declaration because he says that he the said

John H. Randolph is not administrator of the goods and chattels, rights and credits which were of Algernon S. Randolph at the time of his death, nor hath he ever administered as such upon any of the goods or chattels, rights or credits of the said Algernon S. Randolph, but that he, the said John H. Randolph is the only executor of the last will and testament of the said Algernon S. Randolph who has qualified as such, and this he is ready to verify; wherefore he prays judgment of the said writ and declaration, and that the same may be quashed &c.;"

At May term, 1839, the plaintiff and defendant being in the circuit court by their attorneys, on motion of the plaintiff's attorney it was ordered by the court that he have to amend his writ and declaration herein, which said amendment is made accordingly, by striking out the words, "administrator of all and singular the goods and chattels, rights and credits, which were of Algernon S. Randolph at the time of his death, who died intestate" and inserting "executor of the last will and testament of Algernon S. Randolph deceased," and thereupon it was further ordered that this cause be continued till the next November term of the court aforesaid.

Afterwards, at the November term of the court, on 14 November 1839, the following judgment was entered by the circuit court.

"The plaintiff appearing by his attorney, and it appearing to the satisfaction of the court that the writ aforesaid has been duly executed on the defendant, John H. Randolph, executor of the last will and testament of Algernon S. Randolph deceased, and he failing to appear, though solemnly called, judgment was rendered for the plaintiff, Israel Barrett, administrator of Joel F. Randolph for \$5,655, the damages having been assessed under a writ of inquiry."

From this judgment the defendant below prosecuted this appeal.

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Mc KINLEY, Justice, delivered the opinion of the Court.

The defendant in the court below was served with a writ of summons in an action on the case, and a declaration was filed against him as administrator of all and

singular the goods and chattels, &c.;, of Algernon S. Randolph, deceased, who died intestate &c.; To which the defendant entered an appearance and filed in person a plea in abatement averring that he was not administrator of the goods and chattels, &c.;, which were of the said Algernon S. Randolph at the time of his death, &c.;, but that he, the said John H. Randolph, was the only executor of the last will and testament of the said Algernon S. Randolph deceased, &c.; Whereupon the plaintiff moved for leave to amend the summons and declaration by striking out the words

"administrator of all and singular the goods and chattels, rights and credits, which were of Algernon S. Randolph at the time of his death, who died intestate"

and inserting "executor of the last will and testament of Algernon S. Randolph deceased." The leave was granted, the amendment ordered, and the cause continued. At the next term of the court, judgment by default was rendered against the defendant.

To reverse this judgment, the counsel for the plaintiff in error relied on these grounds: 1. the circuit court had no authority to order the amendment of the summons and declaration, there being nothing in the record to amend by; 2. no judgment could be rendered against the defendant until the plea in abatement was disposed of; 3. judgment by default could not be taken against the defendant after appearance entered.

The power of the court to authorize amendments where there is anything on the record to amend by is undoubted. In this case, the defendant admitted by his plea that he was the person liable to the suit of the plaintiff, but averred that he was executor, and not administrator. Whether he acted in one character or the other, he held the assets of the testator or intestate in trust for the creditors, and when his plea was filed, it became part of the record, and furnished matter by which the pleadings might be amended. *Master v. Hurtz*, 3 Maule & Selw. 450;

Barnes' Notes 5; 1 Mass. 433. And in addition to these authorities, express authority is given, by the 32d section of the Judiciary Act of 1789, to the courts of the United States to permit either of the parties at any time to amend any defect in the process or pleadings upon such conditions as the courts shall, in their discretion and by their rules, prescribe. This amendment is therefore not only authorized by the ordinary rules of amendment, but by the statute also.

The object of the defendant in filing the plea was to prove that he was not administrator and that he was executor, and thereby to abate the plaintiff's writ. The motion of the plaintiff for leave to amend the writ and declaration so as to charge the defendant as executor, and not as administrator, amounted to a confession of the truth of the plea, but instead of abating the writ according to the prayer of that plea, the court granted the motion of the plaintiff and ordered the amendment. This proceeding was a final disposition of that plea in abatement, and as the defendant appeared for the purpose of pleading in abatement only, the decision of the court upon the plea put him out of court, and for failing to appear again and plead to the action, judgment by default was properly rendered against him. The judgment of the circuit court is therefore affirmed.

Judgment affirmed.