Dade Vs. Irwin's Executor

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Decided On : 1844

Appeal No. : 43 U.S. 383

Appellant : Dade

Respondent : irwin's Executor

Judgement :

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Dade v. Irwin's Executor

43 U.S. (2 How.) 383

APPEAL FROM THE CIRCUIT COURT OF THE

UNITED STATES FOR THE DISTRICT OF COLUMBIA

SYLLABUS

A court of equity will not interfere where the complainant has a proper remedy at law or where the complainant claims a setoff of a debt arising under a distinct transaction unless there is some peculiar equity calling for relief.

Nor will it interfere where the setoff claimed is old and stale, with regard to which the complainant has observed a long silence, and where the correctness of the setoff is a matter of grave doubt.

The case was this:

In the years 1824 and 1828 Jane Dade executed two deeds of trust to one William Herbert for the purpose of securing a debt which she owed to Thomas Irwin, the deceased.

In 1830, Thomas Irwin Jr. the executor of Thomas Irwin (who had died in the meantime), filed a bill against Jane Dade for the sale of the property. Herbert, the trustee, was alleged to be a lunatic, and the bill therefore prayed that a commissioner might be appointed to make the sale.

Jane Dade in her answer admitted the justice of the claim as stated in the bill. A decree was entered in conformity with the bill, and William L. Hodgson appointed commissioner to carry the same into effect.

On 21 November, 1834, Jane Dade filed another bill on the equity side of the court, stating that the sale was to take place in a few days and praying that it might be suspended. She alleged that she was entitled to a credit under the following circumstances: that in 1817 she had loaned to one James Irwin $680; that in 1821,

he executed his promissory note to her for $826.63, which was the amount of the above sum with interest; that to secure the payment of the note, he assigned a debt due to him from Henderson and Company, which debt was guaranteed by Thomas Irwin, who had become liable for the same; and that the amount of this debt, with interest, should be deducted from the sum for which Thomas Irwin's executor was about to sell her property. The bill further alleged that Thomas Irwin, the deceased, had become personally liable from having sold some cordage to Henderson and Company contrary to his instructions. The assignment of the debt from James Irwin to Jane Dade, (through her agent, John Adam) and the

admission of a personal liability by Thomas Irwin were alleged to be in the following terms:

"I do hereby assign to John Adam the debt due me by Alexander Henderson for cordage sold him by Thomas Irwin, as my agent, for which debt said Irwin is himself liable, having received said Henderson's note without my consent. This assignment is made to secure to Jane Dade the payment of six hundred and eighty dollars, with interest thereon from 16 October, one thousand eight hundred and seventeen, money borrowed from her by said Adam for my use, for which I have given him my note, payable in eighteen months, with interest."

"Given under my hand and seal this 20 May, one thousand eight hundred and twenty-one."

"JAMES IRWIN [Seal]"

"[Endorsed] JOHN ADAM"

"Test: LEWIS COLE"

"Endorsed. If the within debt cannot be recovered from Alexander Henderson, I am liable for the same, provided full time be allowed for the prosecution of the suit."

"THOMAS IRWIN"

The bill further alleged that full time had been allowed for the prosecution of the suit against Henderson, and that there was no prospect of anything being recovered.

Upon filing this bill, an injunction was granted to stay the sale.

In February, 1835, Thomas Irwin, Jr., the executor, filed his answer, denying all knowledge of the note said to have been given by James Irwin, and denying the assignment above recited. The answer admitted that Thomas Irwin had sold some cordage to Henderson and Company, for which he had taken their note; that the

note had been put in suit, judgment rendered upon it, and execution issued; that Henderson was discharged under the insolvent act; that the recovery of the money due on the said note being considered as desperate, his testator had charged the amount to his principals, James Irwin and Company. The answer denied altogether the signature of Thomas Irwin guaranteeing the debt and alleged sundry other matters to show the absence of equity in the claim of the complainant.

In November, 1835, the court refused to dissolve the injunction, and suggested that an issue should be made up, to be tried at the bar of the court sitting as a court of law, to try the question of the genuineness of the signature of Thomas Irwin.

This was done, but the jury were not able to agree, and was discharged.

Numerous depositions were then taken and filed, and the case came on to be heard, when the court decreed that the injunction should be dissolved and the bill dismissed with costs.

The complainant, Jane Dade, prayed an appeal to this Court.

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MR. JUSTICE STORY delivered the opinion of the Court.

In the year 1824, the appellant, Jane Dade, became indebted to Thomas Irwin, the testator, and executed two deeds of trust for the security of the debt. At the November term of the Circuit Court of Alexandria County, 1830, Irwin, the executor, filed his bill to obtain a decree of the sale of the estate so conveyed in trust, and a decree was made without objection for the sale, the appellant admitting the justice of the claim, and the original trustee having become insane, William L. Hodgson was appointed trustee to make the sale. After sundry delays, the trustee advertised the estate for sale on 28 November, 1834, and on the day preceding the intended sale he present bill was filed by the appellant for an injunction against the sale. The bill made no objection to the original debt or

decree, but simply set up a claim, by way of setoff or discount of a totally distinct nature and unconnected with the original debt as due by the testator to her, and for which she alleged in her bill that she ought to receive a credit, to which in equity and strict justice she was entitled. The claim thus set up had its origin in this manner. In May, 1821, James Irwin gave his note for $826.63 to John Adam or order, for Mrs. Dade, for money borrowed of her, which note was endorsed by Adam, and on the same day James Irwin, as collateral security therefor, assigned to Adam a debt due to him by Alexander Henderson for cordage sold him by Thomas Irwin (the testator) as his agent, and for which the assignment alleged Thomas Irwin was liable, having received Henderson's note without the consent of James Irwin. Upon the back of this assignment there now purports to be the following endorsement,

"If the within debt cannot be recovered from Alexander Henderson, I am liable for the same, provided full time be allowed for the prosecution of the suit."

The supposed note referred to in the assignment was dated in January, 1804, and was for the payment of $901.83 to the order of Thomas Irwin, and was signed by Alexander Henderson & Co. This note the bill alleged to include the debt due to James Irwin. Judgment was obtained upon this note in 1805. Afterwards Henderson, in 1806, became insolvent, and in 1816 a bill in equity was filed for the satisfaction of the judgment out of supposed effects in the hands of certain garnishees, which suit was not finally disposed of until October, 1835, and was then abated by Henderson's death.

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The answer to the present bill by Thomas Irwin, the executor, denied the whole equity thereof. It denied that James Irwin ever executed the supposed assignment. But he admitted the origin of the debt due by Henderson and Co., and that the note taken by the testator included it, but that, Henderson having become insolvent, he was not liable for that amount, and charged it in his accounts against James Irwin and Co. He also denied the supposed endorsement on the

assignment to be genuine, but alleged the same to be a sheer fabrication.

The injunction prayed for by the bill was granted, and afterwards the court directed an issue to be tried by a jury to ascertain whether the testator's signature to the endorsement was genuine or not. That issue was tried by a jury, which was unable to agree upon a verdict. The order for an issue was then rescinded and the cause came on for a final hearing in 1839, when the bill was dismissed with costs. There is a great deal of evidence on both sides as to the genuineness of the signature of the testator and also as to the appearance of the ink of the endorsement being that of recent writing. It is also remarkable that in the long interval between the time when the deed of trust was given in 1824 and the time when the sale was advertised and the bill filed, no demand was ever suggested by or on behalf of Mrs. Dade for the present supposed debt due her as a setoff or otherwise. On the contrary, although repeated and earnest applications were made for delay of the sale, from the time of the decree in 1830 until the advertisement in 1834 and some correspondence took place on the subject, no allusion whatsoever was made to any such supposed claim or setoff, but an entire silence existed on the subject. It is also somewhat singular that when the bill upon the trust deed was filed and the decree therein obtained, no suggestion was made by Mrs. Dade in answer thereto of this supposed claim, nor any postponement of the decree of sale asked upon this account.

Now upon this posture of the case, several objections arise as to the maintenance of the suit. In the first place, the present bill is of an entirely novel character. It is not a bill of review or in the nature of a bill of review founded upon any mistake of facts, or the discovery of any new evidence. It admits in the most unambiguous terms that the decree was right. Then it sets up merely a cross-claim or setoff of a debt arising under wholly independent and unconnected transactions. Now it is clear that courts of equity do not act upon the subject of setoff in respect to distinct and unconnected

debts unless some other peculiar equity has intervened calling for relief, as for example in cases where there has been a mutual credit given by each upon the footing of the debt of the other, *see* 2 Story, Eq.Jurisp. §§ 1435, 1436, so that a just presumption arises that the one is understood by the parties to go in liquidation or setoff of the other. In the next place, the remedy for Mrs. Dade, if any such debt as she has alleged exists, is at law against the executor, and there is no suggestion that the estate of the testator is insolvent and that his assets cannot be reached at law. So that the bill steers aside of the assertion of any equity upon the foundation of which it can rest for its support.

In the next place, the nature and character of the claim itself, now for the first time made, long after the decease of both the Irwins and thirteen years at least after its supposed origin. To put the case in the least unfavorable light, it is a matter of grave doubt whether the endorsement of the testator's name on the assignment is genuine or not. That very doubt would be sufficient to justify this Court in affirming the decree of the court below and leaving Mrs. Dade to her remedy at law, if any she have. But connecting this with such a protracted silence for thirteen years, without presenting or making any application for the recognition or allowance of the claim to the testator or his executor, it is impossible not to feel that the merits of the claim at such a distance of time can scarcely be made out in favor of the appellant. It is stale, and clouded with presumptions unfavorable to its original foundation or present validity. Besides, in cases of this sort, in the examination and weighing of matters of fact, a court of equity performs the like functions as a jury, and we should not incline as an appellate court to review the decision to which the court below arrived unless under circumstances of a peculiar and urgent nature.

The decree of the circuit court is therefore

Affirmed with costs.

ORDER

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 Columbia holden in and for the County of Alexandria and was argued by counsel. On consideration whereof it is now here ordered and decreed by this Court that the decree of the said circuit court in this cause be and the same is hereby affirmed with costs.