

**Stearns Vs. Page**

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**Court :** US Supreme Court

**Decided On :** 1849

**Appeal No. :** 48 U.S. 819

**Appellant :** Stearns

**Respondent :** Page

**Judgement :**

Stearns v. Page - 48 U.S. 819 (1849)

U.S. Supreme Court Stearns v. Page, 48 U.S. 7 How. 819 819 (1849)

**Stearns v. Page**

**48 U.S. (7 How.) 819**

*APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES,*

*SITTING AS A COURT OF EQUITY, FOR THE DISTRICT OF MAINE*

## **SYLLABUS**

The general rules stated which govern a court of equity in opening accounts and sustaining claims which are barred by the statute of limitations.

Great caution is exercised, and the complainant is holden to stringent rules of pleading and evidence.

He must state in his bill distinctly the particular act of fraud, misrepresentation, or concealment; must specify how, when, and in what manner it was perpetrated.

The charges must be definite and reasonably certain, capable of proof and clearly proved.

If a mistake is alleged, it must be stated with precision and made apparent, so that the court may rectify it, with a feeling of certainty that they are not committing another and perhaps greater mistake.

And especially must there be distinct averments as to the time when the fraud, mistake, concealment, or misrepresentation was discovered, and what the discovery is, so that the court may clearly see whether, by the exercise of ordinary diligence, the discovery might not have been before made.

The bill, filed by Stearns as administrator *de bonis non* of John O. Page, proposed to open and review the accounts of the estate of said Page, which were filed from 1811 to 1816 by his widow and original administratrix, Sarah Page.

The record was very voluminous. There was a bill, and an amended bill, and amendments to the amended bill, and an amendment to one of the amendments to the amended bill. Then there were answers to all these bills, and exceptions to the answers, and motions for the production of books and papers, and a great mass of testimony filed. After all, the record was deemed incomplete, and a certiorari issued to bring up more.

Page 48 U. S. 820

It is unnecessary to give an extended account of all these things because the opinion of the Court is so intermingled with and founded upon the facts of the case that it is sufficient for the Reporter to refer the reader to that opinion.

The defendant below pleaded the statute of limitations, although he answered the bill.

In October, 1843, the circuit court dismissed the bill, when the complainant appealed to this Court.

Page 48 U. S. 826

MR. JUSTICE GRIER delivered the opinion of the Court.

A brief history of the conceded facts of this case, anterior to the filing of the amended bill, may save the trouble of a more tedious analysis of the bill and answer, with their numerous amendments, and tend to elucidate the merits of the case and the questions decided by the Court.

John O. Page, the complainant's intestate, was a merchant in Hallowell, Maine. He built and owned shares in vessels employed in trade, and had a retail shop or store, which, for some years before his death, was managed by his brother, Rufus K. Page. In 1810, John O. Page went to England, leaving his business chiefly in the care of his brother, and died there, in February, 1811, intestate, leaving a widow and three minor children. Sarah Page, the widow, took out letters of administration on the estate. She filed an inventory of the property, amounting to the sum of \$64,000, and charged herself with additional receipts of cash in the administration accounts afterwards filed, showing the whole amount of the estate to be over \$80,000.

Rufus K. Page claimed to have been a partner with his brother in the store, by a parol agreement with him, whereby John should furnish the capital, and Rufus conduct the business, dividing the profits, five eighths to John and three eighths to Rufus.

The sureties of Sarah Page in her administration bond were Nathaniel Dummer, her father-in-law, and Thomas Bond, Esq., her brother-in-law, who also aided and counseled her in settling the estate. In February, 1812, Chandler Robins, register of the probate court, and John Agry, a respectable merchant and shipowner, were

mutually chosen by the administratrix and Rufus K. Page to settle all accounts between the estate of John O. Page and Rufus K. Page. By their settlement or award, Rufus was charged as debtor to John

Page 48 U. S. 827

For capital advanced to store . . . . . \$10,769.00

For five eighths of profits of store. . . . 12,934.00

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Amounting in all to . . . . . \$23,703.00

From which was deducted John's debt to store 7,828.00

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Leaving a balance due by Rufus to the estate \$15,875.00

After adding and subtracting various other matters of account not connected with the partnership, they found the balance due by Rufus to the estate to be \$17,190, of which \$8,106 was cash, and the remainder, \$9,084, consisted of John's share of the notes and accounts due to the store, and which Rufus retained in his hands for collection. The first administration account filed by Sarah Page acknowledges the receipt in cash of the sum of \$8,106 from R. K. Page, and the accounts afterwards filed show that she had received the balance of \$9,804, partly in cash and partly in notes.

Sarah Page settled the final account of her administration on 20 February, 1816. She died in 1826. In 1828, Stearns, the complainant, intermarried with Louisa, one of the daughters and heirs of John O. Page. In 1834, he took out letters of administration *de bonis non* on the estate of John O. Page, for the purpose of prosecuting claims under the treaty of the United States with France. After this he commenced an examination of the administration accounts of Sarah Page, and began to entertain suspicions that Rufus K. Page had taken advantage of her

ignorance of accounts, and had defrauded her in his settlement. And finally, at November term, 1838, more than twenty-six years after the settlement of defendant's account with the administratrix, this bill was filed against Rufus K. Page for a discovery and account.

The amended bill abounds in general charges of fraud against the defendant; alleges that he concealed from the administratrix the true state of the affairs of the deceased, which had been entrusted to his care; that the partnership claimed by him with the deceased was a false pretense, "and that the said Sarah did not distrust, or had it not in her power to disprove, the same"; that the accounts exhibited of the partnership transactions were totally false and fraudulent in their statements and aggregates, calculated and designed to deceive and mislead.

It charges, also, that some ten thousand dollars of private debts due by Rufus to John were intermingled with the partnership accounts so as to produce an erroneous result, and that he had sold and converted to his own use the brig *Emmeline*, which was owned, in whole or in part, by John, and rendered no account of the same.

Page 48 U. S. 828

Afterwards, in October, 1841, by a further amendment to the bill, the complainant admits that, "from means of information which he now has," there was a partnership between John and Rufus, but insists that the profits were to be divided between them in the ratio of two-thirds to John and one-third to Rufus.

The defendant, in his answer, after denying the general charges of fraud and mistake, asserts, that he entered into partnership, by parol agreement, with his brother, John, in 1806; that the business of the firm was transacted in the name of Rufus K. Page; that John advanced the capital, and Rufus superintended and conducted the business of the store, and the profits thereof were to be divided five eighths to John and three eighths to Rufus; that the books of the firm were kept on these principles, and always open to the inspection of John, and frequently examined by him; that when John advanced money or goods for the use of the

firm, he took the notes of the firm; and that defendant gave notes to John for goods and money supplied, and (to use his own phrase) "for equalizing the capital," to the amount of over \$10,000; that immediately on the announcement of the death of John O. Page, an inventory of the goods in the store was taken and placed in the hands of Bond, the attorney of Sarah Page, the administratrix; that he afterwards settled fully and fairly all accounts with the administratrix and her attorney, and produces the books, and the statement of their final settlement as made out by Robins and Agry, the referees chosen by the parties to make the settlement and adjust the accounts, and shows, moreover, by the administration accounts filed by said Sarah, that he had paid her the balance of over \$17,000 found to be due by him according to the account thus stated.

He asserts, moreover, that John owned but one-half of the brig *Emmeline*, which the administratrix afterwards sold to the defendant for the sum of \$3,000, with which she charged herself in her administration account. And finally, the answer relies on the settlement of accounts thus made more than twenty-five years before the filing of the bill, as a bar to all further account, especially after so great a lapse of time, when papers are lost, witnesses dead, and transactions forgotten, and pleads the statute of limitations.

Statutes of limitation form a part of the legislation of every government, and are necessary to the peace and repose of society. When they are addressed to courts of equity as well as to courts of law, as they seem to be in all cases of concurrent jurisdiction (as in matters of account), they are equally obligatory on each court. In other cases, courts of equity act upon

Page 48 U. S. 829

the analogy of limitations at law, and sometimes upon their own inherent doctrine of discouraging, for the peace of society, antiquated demands, by refusing to interfere where there has been gross laches or unreasonable delay. They also interfere in many cases to prevent the bar of the statutes, where it would be inequitable or unjust, as, the example, if a party has perpetrated a fraud which has not been discovered till the statutable bar may apply to it in law, courts of equity

will interpose and remove the bar out of the way of the injured party. In cases of mistake also, as well as fraud, they will not consider the statute as running till after the discovery of the mistake, as laches cannot be imputed to the injured party till the discovery of the fraud or mistake has been made. 2 Story's Eq., 1520. But as lapse of time necessarily obscures the truth and destroys the evidence of past transactions, courts of chancery will exercise great caution in sustaining bills which seek to disturb them. They will hold the complainant to stringent rules of pleading and evidence, and require him to make out a clear case. Charges of fraud are easily made, and lapse of time affords no reason for relaxing the rules of evidence or treating mere suspicion as proof. If a defendant can be compelled to open settled accounts, to explain or prove each item, after a lapse of near thirty years, by general allegations of fraud -- if the fraud can be proved by his inability to elucidate past transactions after so great a length of time, or by showing some slips of recollection, or by contradicting him in some collateral facts by the frail recollection of other witnesses -- no man's property or reputation would be safe.

A complainant, seeking the aid of a court of chancery under such circumstances, must state in his bill distinctly the particular act of fraud, misrepresentation, or concealment -- must specify how, when, and in what manner, it was perpetrated. The charges must be definite and reasonably certain, capable of proof, and clearly proved. If a mistake is alleged, it must be stated with precision, and made apparent, so that the court may rectify it with a feeling of certainty that they are not committing another, and perhaps greater, mistake. And especially must there be distinct averments as to the time when the fraud, mistake, concealment, or misrepresentation was discovered, and what the discovery is, so that the court may clearly see, whether, by the exercise of ordinary diligence, the discovery might not have been before made.

Every case must, of course, depend on its own peculiar circumstances, and there would be little profit in referring to the very numerous cases to be found in the books on this subject. In the case of [Michoud v. Girod](#), 4 How. 504, lately decided in

this Court, transactions were investigated after a lapse of more than twenty years; but the facts proving the fraud were all on record, and were not disputed. The false accounts made out against the estate of the deceased by the executors were on file, and their iniquity was apparent on their face. Moreover, the complainants resided in Europe, and were kept in ignorance of their rights, and hindered from prosecuting them by the promises, threats, and fraud of the guilty parties.

In this case, the complainant seeks to open an account stated and settled twenty-six years before the filing of his bill, and this account not rendered by the defendant to a woman unacquainted with business, and received by her without examination, but stated from the books, by referees or arbitrators chosen for the purpose, and in the nature of an award between the parties, executed and acquiesced in by both without complaint for a quarter of a century.

Six years is a statute bar to an action of account, both at law and in equity. Has the complainant stated in his bill, and sustained by proof, such a case as would justify the interference of a court of equity after so great a lapse of time?

1. Has he discovered anything which was not as open to discovery by himself or his predecessor in the administration, more than twenty years before?

2. Has he shown any fraud, misrepresentation, or concealment, practiced by the defendant on Sarah Page, and "made it palpable to the court," so that it would be justified in directing the whole account to be opened and taken *de novo*?

3. Or has such clear mistake or omission been shown with regard to any of the items of the account, that the court would grant liberty to the complainant to surcharge and falsify generally, or as to any particular item?

In order to repel the imputation of laches, the complainant states that he did not take out letters of administration *de bonis non* on the estate of John O. Page till the year 1834, eight years after the death of Sarah Page, the administratrix, and six years after his marriage with one of the heirs;

"That on examining the papers and accounts, he discovered that there was a considerable amount of property of said estate included in the inventory which had not been administered by said Sarah in her lifetime; that in pursuing the inquiry, he gradually obtained information by various means, afforded, in the first place, by the state of those papers, and from sundry other sources and conversations with persons now living or deceased, which produced the persuasion and firm belief, that there was much of said property in the hands and possession of Rufus K. Page which has not been exhibited or accounted for by him,"

&c.;

Page 48 U. S. 831

"but that how far the said Sarah Page was in the knowledge and possession of all the information in respect to the premises that has come to his knowledge, he is not able to say, on account of her death before he had any reason or opportunity to ascertain the same."

It appears, therefore, that the complainant has discovered no fact of which Sarah Page was ignorant. He can specify no misrepresentation, concealment, or fraud, practiced by defendant, which has for the first time come to light. He does not state what property was not accounted for by Sarah Page, or how she was deceived or defrauded by Rufus. In fact, taking the various bills and amendments together, it is very plain that this bill was filed on suspicion of fraud, and for the purpose of a discovery of facts from the defendant on which to found specific charges of fraud. It is clear also that these suspicions had their origin not on the discovery of any new facts concealed from his predecessor in the administration, but from his necessary ignorance of facts of which Sarah Page and her counsel must have been fully conversant, from the very nature and circumstances of the case.

When this bill is divested of its general and vague charges of fraud in matters of which the complainant could have no personal knowledge, it might well be doubted whether it contains sufficient matter properly set forth to entitled the

complainant to call on the defendant, after so great a length of time, to answer to its allegations and make a discovery with regard to facts so likely to be forgotten or indistinctly remembered.

But, waiving this point, let us examine the specifications of fraud or mistake which some attempts have been made to substantiate.

1. The complaint about the ship *Horatio* being found untenable is left out of the amended bill, and need not be noticed.
2. The bill denied that any partnership had existed between Rufus and John O. Page, but, after taking testimony to contradict the answer in this respect, an amendment, filed in 1841, admits the partnership, but charges that the terms were different from those stated in the answer. On this point, the answer, being responsive to the bill, must be taken to be true unless disproved by two witnesses, or something equivalent. The memorandum in the handwriting of John O. Page, not being signed by Rufus or himself, and never communicated to Rufus or assented to by him, cannot be received as evidence of the fact.
3. The notes of Rufus to John for \$10,000, if given, as stated in the answer, to show the amount of capital advanced to the store by John, are fully and properly accounted for.

Page 48 U. S. 832

The referees who stated these accounts had the partnership books and the parties before them, and could best judge how the capital account had been kept, whether by credits in the books or giving the notes of the firm, which would be the notes of Rufus K. Page. The parties acquainted with the transaction had no difficulty about it, and the mere suggestion of a stranger to the whole transaction, now made, some thirty years afterwards, that possibly these notes were the private debt of Rufus, and not given to represent the capital of the store, cannot be received as evidence of mistake or fraud. The answer being responsive to the bill, and uncontradicted by the evidence, is conclusive of the fact. The accounts show that Rufus accounted with the administratrix for the goods of the store inventoried on

the decease of John O. Page, for the capital of the firm, amounting to over \$10,000, and for John's share of the profits, exceeding \$12,000. The complainant has wholly failed to show any mistake, omission, fraud, concealment, or misrepresentation, on the part of Rufus K. Page, in connection with the subject.

4. The interest of John O. Page in the brig *Emmeline* was transferred by Sarah Page, the administratrix, to Rufus, and the amount accounted for by her in the inventory and administration accounts settled by her. Whether the money was paid to her by Rufus, as he asserts in his answer, or she made a gift of it to him on account of the known intention of her husband to give it to him by his will, is wholly immaterial in this case, as the administrator *de bonis non* can have no concern with property administered and accounted for by his predecessor in the trust.

In the course of the argument, the learned counsel noticed other items of account, which they alleged to be erroneously stated or not sufficiently explained, but as they were not charged in the bill, they will not be noticed.

The decree of the circuit court must therefore be

*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 Maine 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.