Neves Vs. Scott

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Appellant : Neves

Respondent : Scott

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U.S. Supreme Court Neves v. Scott, 50 U.S. 196 (1850)

Neves v. Scott

50 U.S. 196

APPEAL FROM THE CIRCUIT COURT OF THE

UNITED STATES FOR THE DISTRICT OF GEORGIA

SYLLABUS

The rule formerly with regard to the enforcement of marriage articles which created executory trusts was this, namely that chancery would interfere only in favor of one of the parties to the instrument or the issue, or one claiming through

them, and not in favor of remote heirs or strangers, though included within the scope of the provisions of the articles. They were regarded as volunteers.

But this rule has in modern times been much relaxed, and may now be stated thus -- that if, from the circumstances under which the marriage articles were entered into by the parties or as collected from the face of the instrument itself, it appears to have been intended that the collateral relatives, in a given event, should take the estate, and a proper limitation to that effect is contained in them, a court of equity will enforce the trust for their benefit.

The following articles show an intention by the parties to include the collateral relatives:

"Articles of agreement made and entered into this 17th day of February, in the year 1810, between John Neves and Catharine Jewell, widow and relict of the late

Page 50 U. S. 197

Thomas Jewell, deceased, all of the state and county aforesaid, are as follows, *viz.:* "

"Whereas a marriage is shortly to be had and solemnized between the said John Neves and the said Catharine Jewell, widow, as aforesaid, are as follows, to-wit:"

"That all property, both real and personal, which is now, or may hereafter become the right of the said John and Catharine shall remain in common between them, the said husband and wife, during their natural lives, and should the said Catharine become the longest liver, the property to continue hers so long as she shall live, and at her death the estate to be divided between the heirs of her, said Catharine, and the heirs of the said John, share and share alike, agreeable to the distribution laws of this state made and provided. And on the other hand, should the said John become the longest liver, the property to remain in the manner and form as above."

Moreover, these articles are an executed trust, not contemplating any future act, but intended as a final and complete settlement.

Property acquired by either party after the marriage must follow the same direction which is given by the settlement to property held before the marriage, if there is a clause to that effect in the same.

This was the case of a bill filed upon the equity side of that court by William Neves, a citizen of Alabama, and James C. Neves, a citizen of Mississippi, against Scott and Rowell, citizens of Georgia.

The facts were these.

In the year 1810, John Neves and Catharine Jewell, widow of Thomas Jewell, deceased, in contemplation of a marriage shortly to take place between them, executed the following articles of agreement.

" *Georgia, Baldwin County* "

"Articles of agreement made and entered into this 17 February in the year 1810 between John Neves and Catharine Jewell, widow and relict of the late Thomas Jewell, deceased, all of the state and county aforesaid, are as follows, *viz.:* "

"Whereas a marriage is shortly to be had and solemnized between the said John Neves and the said Catharine Jewell, widow, as aforesaid, are as follows, to-wit, that all the property, both real and personal, which is now or may hereafter become the right of the said John and Catharine shall remain in common between them, the said husband and wife, during their natural lives, and should the said Catharine become the longest liver, the property to continue hers so long as she shall live, and at her death the estate to be divided between the heirs of the said Catharine and the heirs of the said John, share and share alike, agreeable to the distribution laws of this state made and provided. And on the other hand, should the said John become the longest liver, the property to remain in the manner and form as above."

"In witness whereof, the said John and Catharine hath hereunto

set their hands and affixed their seals the day and year above written."

"JOHN NEVES [L.S.]"

"CATHARINE her X mark. JEWELL [L.S.]"

"Test:"

"CORNELIUS MURPHY"

"JESSE WARD"

The marriage took place soon afterwards.

In October, 1828, John Neves made a will, and shortly thereafter died By this will he directed commissioners to be appointed who should divide his whole estate, both real and personal, equally between his wife, Catharine Neves, and George W. Rowell, to whom he devised his half, and appointed Captain Richard Rowell and Myles Greene his executors.

In a codicil the testator directed that certain real and personal property should be sold for the payment of his debts.

Greene declined to act as executor, but Richard Rowell took out letters testamentary, and was proceeding to sell the property named in the will when Catharine filed a bill against him in the Superior Court of Baldwin County, and obtained an injunction upon him to stay further proceedings. She produced the agreement above mentioned, alleged that under it she was entitled to the whole of the real and personal estate during her natural life, and offered to give security for the payment of all his debts. The result of this suit was that Rowell was allowed the expenses which he had incurred whilst acting as executor, and Catharine gave bond, with security, for the payment of the debts of the estate.

In 1835, Catharine intermarried with William F. Scott, and died in September, 1844.

In February, 1845, William Neves and James C. Neves, the brother and nephew of John Neves, filed their bill in the circuit court. The bill stated the above facts; alleged that after the marriage between Catharine and Scott all the property remained in their joint possession until her death; that Scott was insolvent, and had used a large amount of the money and proceeds of the estate in payment of his debts; stated, as an estoppel, the former judgment of a court in Georgia sustaining Catharine's right upon the ground of the validity of the marriage settlement; charged waste, and prayed for a discovery, and decree that they, the complainants, might be put into possession of one-half of all the property which was owned by John Neves and Catharine Neves. They also made Richard Rowell a defendant.

Page 50 U. S. 199

In April, 1845, the defendants both demurred to the bill.

In April, 1846, the circuit court, then holden by John C. Nicoll, the district Judge, sustained the demurrer, from which decree the complainants appealed to this Court.

Page 50 U. S. 207

MR. JUSTICE NELSON delivered the opinion of the Court.

The bill was filed by the complainants in the court below, to obtain the possession of the undivided half of an estate, embraced in a marriage settlement between John Neves and Catharine Jewell, entered into in contemplation of marriage, and which shortly afterwards took place.

Each of the parties, being the owner and in possession of considerable estates at the time, entered into the following agreement:

"Articles of agreement made and entered into this 17 February, 1810, between John Neves and Catharine Jewell, widow, and relict of the late Thomas Jewell,

deceased, all of the state and county aforesaid as follows: "

"Whereas a marriage is shortly to be had and solemnized between the said John Neves and the said Catharine Jewell, as aforesaid, are, as follows, to-wit, that all the property, both real and personal, which is now or may hereafter become the right of the said John and Catharine shall remain in common between them, the said husband and wife, during their natural lives, and should the said Catharine become the longest liver, the property to continue hers so long as she shall live, and at her death the estate to be divided between the heirs of her, said Catharine, and the heirs of the said John, share and share alike, agreeable to the distribution laws of this state made and provided. And on the other hand, should the said John become the longest liver, the property to remain in the manner and form as above. "

Page 50 U. S. 208

The parties after the marriage held and enjoyed their respective estates in common during their joint lives and until the death of John in 1828, and after his death the same remained in the possession and enjoyment of Catharine, the survivor, until her decease in 1844, since which time it has been in the possession and under the control of William F. Scott, her second husband, and one of the defendants. The other defendant is the executor under the will of John Neves, the husband.

The complainants are the brother and nephew, and only surviving heirs, of John Neves, and claim a moiety of the estate, according to the terms of the marriage settlement. And the questions presented in the case are upon the effect to be given to this instrument.

The argument, on the part of the defendants, is that the deed is to be regarded in the light of marriage articles, creating executory trusts to be carried into execution at some future day by an instrument that would operate to vest the estates according to the stipulations in the articles. And that, as the agreement is founded upon the consideration of marriage, and other considerations moving only

between the parties, the complainants, being the collateral relatives of John Neves, do not, according to the rules of equity applicable to this species of contract, come within the reach and influence of the considerations, so as to entitle them to the interposition of a court of chancery to enforce the execution of the trusts. That where the trust is executory, and rests merely in covenant, the court will interpose only in favor of one of the parties to the instrument or the issue, or one claiming through them, and not in favor of remote heirs or strangers, though included within the scope of the provisions of the articles. Fonbl., book 6, ch. 6, § 8; Atherly on Settlements, ch. 5, 125; 2 Story's Eq. §§ 986, 987; 2 Kent's Com. 173.

Upon this ground, the court below sustained the demurrer to the bill, and denied the prayer of the complainants.

The numerous cases to be found in the books, several of which were referred to in the argument on this subject, are by no means uniform or consistent, and the general rule as stated, and upon which the case below turned, has been made the subject of so many exceptions and qualifications, that it can scarcely, at this day, be regarded as authority. *Vernon v. Vernon,* 2 P.Wms. 594; *Edwards v. Countess of Warwick, id.* 171; *Osgood v. Strode, id.,* 245; *Ithell v. Beane,* 1 Ves.Sr. 215; *S.C.,* 1 Dick. 132; *Stephens v. Trueman,* 1 Ves.Jr. 73, 74; *Pulvertoft v. Pulvertoft,* 18 Ves. 90; 2 Kent's Com. 172, 173; Atherly 145-148.

The case of *Vernon v. Vernon* is a direct authority in support of the limitation in question, and the other cases to which I have referred are distinguishable only upon very technical and refined reasoning, hardly reconcilable with a common sense administration of justice. The principle is that, in order to bring collateral relatives within the reach and influence of the consideration, there must be something over and above that flowing from the immediate parties to the marriage articles, from which it can be inferred that relatives beyond the issue were intended to be provided for, and that if the provision in their behalf had not been

agreed to, the superadded consideration would not have been given.

That for anything short of this, they will be regarded as volunteers, in whose favor a court of equity will not interpose against the settler, or anyone claiming under him.

But while the rule seems generally to have been adhered to in the form in which it is stated, it has been practically disregarded, as the slightest degree of valuable consideration imaginable is seized hold of to give effect to the limitation.

And it need not be made to appear that these slight considerations were intended to support the provision for the distant relatives, it being assumed by the court as a presumption of law.

The Lord Chancellor, in *Stephens v. Trueman,* observed,

"The old rule was, and is now, although of late not so strictly adhered to, that none can come here for a specific performance, who do not come under the consideration of the agreement; as that it shall not be for the benefit of collateral branches in marriage articles; but, as agreements are entire, and the several branches may have been in view, the court has in later cases laid hold of any circumstances to distinguish them out of it, still preserving the general rule."

And in *Edwards v. Countess of Warwick,* the doctrine is stated still more strongly, where the chancellor observed,

"that the consideration for the precedent limitations on a marriage settlement has been applied even to the subsequent ones, as where, on a consideration of marriage, and portion, land has been settled on the husband for life, and then to the wife for life, remainder to the children, with remainder to a brother, these considerations have extended to the brother, and the reason is, because it may be very well intended, that the husband, or his parents, would not have come into the settlement, unless all the parties thereto had agreed to the limitation to the brother."

The result of all the cases, I think, will show that if, from

the circumstances under which the marriage articles were entered into by the parties, or as collected from the face of the instrument itself, it appears to have been intended that the collateral relatives, in a given event, should take the estate, and a proper limitation to that effect is contained in them, a court of equity will enforce the trust for their benefit.

They will not be regarded as volunteers outside of the deed, but as coming fairly within the influence of the considerations upon which it is founded; the consideration will extend through all the limitations for the benefit of the remotest persons provided for consistent with law.

The provisions in the deed before us are very peculiar, and different from any that have come under my observation in an examination of the cases, and, of themselves, would probably be sufficient to distinguish it from all of them in which the general rule has been applied.

The collateral relatives of the parties to the instrument seem, not only to have been within their contemplation at the time, but to have been the direct and special objects of their bounty.

None of the limitations are in favor of the issue of the marriage, *eo nomine,* usually found in these instruments, but are in favor of the several heirs of each of the parties, as a class, the estate to be divided equally between the two. The settlement seems to negative the expectation of issue, and seeks at once to provide for the collateral relatives, as the peculiar phraseology would hardly have occurred to the most inexperienced draftsman, if he had had in his mind at the time the issue of the marriage.

It is true the children or grandchildren coming within the description of the limitation to the heirs of each of the parties, being the heirs of both, would, if they survived the parents, take the estate to the exclusion of the collateral branches, but this would seem to be an accident, rather than a result to be derived from the frame of the limitation, as that looks directly to a provision for the separate and

several heirs of each of the parties, and to an equal division of the estate between them.

Each of the parties appears to have been in the possession of considerable estates which was the largest is not stated, and on the event of the marriage, both were to become common property during their joint lives and the life of the survivor, and, instead of providing for the return of the separate estate of each, on the termination of the lives, into the channel from which it was diverted by the marriage contract, they agree that the joint estate shall be divided equally, and that each moiety shall take that direction and the distributed in their respective families.

Page 50 U. S. 211

To refuse to carry into execution this arrangement, therefore, would be,\ in effect to overthrow the settlement and defeat not only the manifest intent, but the leading design, of the parties entering into it. None of the cases relied on, I think, go this length.

But, without pursuing this branch of the case farther, or placing our decision upon it, there is another ground, unembarrassed by conflicting authorities or refined distinctions, which the court are of opinion is decisive of the questions involved in favor of the complainants. And that is that the deed in question is a marriage settlement, complete in itself -- an executed trust, which requires only to be obeyed, and fulfilled by those standing in the relation of trustees, for the benefit of the *cestui que trusts,* according to the provisions of the settlement.

The defendants are not called upon to make a settlement of the estate, under the direction of the court, from imperfect and incomplete marriage articles, and which might or might not be subject to the objections stated.

The settlement has been made by the parties themselves, and the only question is whether the defendants shall be compelled to carry it into execution.

The distinction between trusts executed and executory is this: a trust executed is where the party has given complete directions for settling his estate, with perfect

limitations; an executory trust where the directions are incomplete and are rather minutes or instructions for the settlement. 1 Mad.Ch. 558; 2 Story's Eq. § 983

The former, as observed by Lord Eldon, in one sense of the word, is a trust executory -- that is, he observes, if A.B. is a trustee for C.D., or for C.D. and others, that, in this sense, is executory, that C.D., or C.D. and the other persons, may call upon A.B. to make a conveyance, and execute the trust, but these are cases where the testator has clearly decided what the trust is to be, and as equity follows the law where the testator has left nothing to be done, but has himself expressed it, there the effect must be the same whether the estate is equitable or legal. *Jervoise v. Duke of Northumberland,* 1 Jac. & Walk. 550. The remarks were made for a different purpose than the one in view here, but they afford a clear illustration of the distinction stated.

Now the only plausible ground for contending that this instrument imports but mere articles, as contradistinguished from a marriage settlement, is that in the caption it begins, "Articles of agreement," &c.;, but it is to be observed that the deed

Page 50 U. S. 212

is drawn up somewhat unskillfully, and without much regard to form, and that the draftsman had not probably in his mind, if even he was aware of, the technical or legal distinction between the two instruments, and besides, and what is more material to the purpose, we must look to the body of the instrument, its provisions and tenor, and to the intent of the parties, as collected from the whole, in order to determine its character and effect.

Courts will endeavor, as much as possible, to give effect to marriage agreements according to the understanding of the parties, and where they evidently considered the instrument in the light of a final and complete settlement, not contemplating any future act, it will be so regarded, and in order to effectuate their intent, one part of the instrument even will be taken as a complete settlement of the estate comprised in it, and another part as mere articles.

In the case before us, every portion of the estate is definitely settled both in respect to the amount of the interest, and the particular persons who are to take; the limitations leave no part undisposed of; estates for life, and in remainder in the property, are limited with all the formality required to enable a court of equity to carry the trust into execution, according to the intent of the settlers. There is nothing in the instrument contemplating any further act to be done by them.

The practical construction also accords with that derived from their language. The estate was possessed and enjoyed under it, by both or one of them, from 1810 to 1844, a period of thirty-four years.

If a third person had been interposed, as trustee of the estates, with the limitation as found in the instrument, no one could for a moment have doubted but that the settlement would have been final and complete, and yet it has long been settled, that equal effect will be given to it in equity, when made only between the parties themselves; each one will be regarded, so far as may be necessary to effectuate their intent, as holding their several estates as trustees for the uses of the settlement. 2 Story's Equity § 1380; Fonbl., book 1, ch. 2, § 6, note n; 2 Kent's Com. 162, 163; 9 Ves. 375, 383; 3 Johns.Ch. 540. There can be no objection to the execution of the trust on this ground.

It appears from the bill, that portions of the estate in the possession of the defendants were acquired by the parties to the settlement, subsequent to its execution, and it is supposed that this consideration is material in determining its character, and that if it should be regarded as a settlement, and not mere

Page 50 U. S. 213

articles, these subsequent acquisitions would not be bound by it. But this is a mistake.

The instrument provides for subsequently acquired property by either of the parties, as well as the present, and in such cases there is no doubt but that it follows the limitations of the settlement, the same as the property then in possession. 10 Ves. 574, 579; 9 *id.* 95, 96; 7 *id.* 294; 6 *id.* 403, note, Boston

ed.

Looking, then, at the instrument as complete in its directions and limitations in the settlement of the estate, and as presenting the case of an executed trust, the difficulty set up against the complainants when claiming under marriage articles disappears, for, being the beneficial owners, and vested with the equitable title, a court of equity will interpose, and compel the trustee, or anyone standing in that relation to the estate, to vest them with the legal title.

We are of opinion, therefore, that the court below erred in giving judgment in favor of the defendants on the demurrer to the bill, and that the decree should be

Reversed.

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 Georgia, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said circuit court in this cause be and the same is hereby reversed with costs, and that this cause be and the same is hereby remanded to the said circuit court, for further proceedings to be had therein in conformity to the opinion of this Court.