

Shields Vs. Barrow

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Appeal No. : 58 U.S. 130

Appellant : Shields

Respondent : Barrow

Judgement :

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Shields v. Barrow

58 U.S. (17 How.) 130

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE EASTERN DISTRICT OF LOUISIANA

SYLLABUS

A vendor sold an estate in Louisiana for a large sum of money, and received payment, from time to time, for nearly one-half of the amount. Afterwards he agreed to take back the property upon the payment of an additional sum of money,

which was secured to him by the promissory notes of six individuals, four of whom lived in Louisiana, and two in Mississippi.

Becoming dissatisfied with this arrangement, the vendor filed a bill in the Circuit Court of the United States for Louisiana against the two citizens of Mississippi to set aside the agreement as having been improperly procured and to restore him to his rights under the original sale.

All the six persons with whom the second arrangement was made were endorsers upon the notes originally given by the vendee for the purchase money under the sale.

The four parties to the compromise, who resided in Louisiana, not being suable in the circuit court of that state, and their presence, as defendants, being necessary, the court could not rescind the contract as to two, and allow it to stand as to the other four. Consequently it could not pass a decree, as prayed.

Neither the act of Congress of 1839, 5 Stat. 321, 1, nor the 47th rule for the equity practice of the circuit courts enables a circuit court to make a decree in equity in the absence of an indispensable party whose rights must necessarily be affected by such decree.

The cases upon this point, the statute, and the rule examined.

The bill should have been dismissed.

The two Mississippi defendants answered.

The bill insisted that the compromise was made in good faith, and one of them filed a cross-bill against the vendor to compel him to carry it out.

This cross-bill was also defective as to parties, the other sureties and the vendee having an interest in the subject, so that, without their presence, no decree could be made.

The vendor then filed a petition by way of amended bill stating his willingness to carry out the compromise upon certain conditions, which he prayed the court to enforce.

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The court then passed an order that unless the two Mississippi defendants should, before a day named, file a cross-bill and make all the Louisiana parties defendants, the vendor might proceed upon his prayer to rescind the compromise as far as the two Mississippi parties were concerned.

This was entirely irregular. Parties cannot be forced into court in this way, nor can new parties be brought into a cause by a cross-bill.

The mode considered of making new parties when necessary.

The original and cross-bills must be ordered to be dismissed.

The history of the case is given in the opinion of the Court.

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MR. JUSTICE CURTIS delivered the opinion of the Court.

To make intelligible the questions decided in this case, an outline of some part of its complicated proceedings must be given. They were begun by a bill in equity filed in the Circuit Court of the United States for the Eastern District of Louisiana on the 19th of December, 1842, by Robert R. Barrow, a citizen of the State of Louisiana, against Mrs. Victoire Shields, and by amendment against William Bisland, citizens of the State of Mississippi. The bill stated that in July, 1836, the complainant sold certain plantations and slaves in Louisiana to one Thomas R. Shields, who was a citizen of Louisiana, for the sum

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of \$227,000, payable by installments, the last of which would fall due in March, 1844.

That negotiable paper was given for the consideration money, and from time to time \$107,000 was paid. That the residue of the notes being unpaid, and some of them protested for nonpayment, a judgment was obtained against Thomas R. Shields, the purchaser, for a part of the purchase money, and proceedings instituted by attachment against Thomas R. Shields and William Bisland, one of his endorsers, for other parts of the purchase money then due and unpaid. In this condition of things, an agreement of compromise and settlement was made on the 9th day of November, 1842, between the complainant, of the first part, Thomas R. Shields, the purchaser, of the second part, and the six endorsers on the notes given by Thomas R. Shields, of the third part. Of these six endorsers, Mrs. Shields and Bisland, the defendants, were two. By this new contract the complainant was to receive back the property sold, retain the \$107,000 already paid, and the six endorsers executed their notes, payable to the complainant, amounting to thirty-two thousand dollars, in the manner and proportions following, as stated in the bill:

"The said William Bisland pays ten thousand dollars, in two equal installments, the first in March next, and the other in March following, for which sum the said William Bisland made his two promissory notes, endorsed by John P. Watson, and payable at the office of the Louisiana Bank in New Orleans. The said R. G. Ellis \$6,966.66, on two notes endorsed by William Bisland. The said George S. Guion, \$2,750, on two notes endorsed by Van P. Winder. The said Van P. Winder, \$2,750, on two notes endorsed by George S. Guion. The said William B. Shields, \$4,766.66, on two notes endorsed by Mrs. Victoire Shields; and finally, Mrs. Victoire Shields the same amount on two notes payable as aforesaid at the office of the Louisiana Bank in New Orleans."

The complainant was to release the purchaser, Thomas R. Shields, and his endorsers from all their liabilities then outstanding, and was to dismiss the attachment suit then pending against Thomas R. Shields and Bisland.

The bill further alleges that though the notes were given and the complainant went into possession under the agreement of compromise, the agreement ought to be rescinded and the complainant restored to his original rights under the contract of sale, and it alleges various reasons therefor which it is not necessary in this connection to state. It concludes with a prayer that the act of compromise may be declared to have been improperly procured and may be annulled and set aside,

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and that the defendants may be decreed to pay such of the notes, bearing their endorsement, as may fall due during the progress of the suit, and for general relief.

Such being the scope of this bill and its parties, it is perfectly clear that the Circuit Court of the United States for Louisiana could not make any decree thereon. The contract of compromise was one entire subject, and from its nature could not be rescinded, so far as respected two of the parties to it, and allowed to stand as to the others. Thomas R. Shields, the principal, and four out of six of his endorsers, being citizens of Louisiana, could not be made defendants in this suit, yet each of them was an indispensable party to a bill for the rescission of the contract. Neither the Act of Congress of February 28, 1839, 5 Stat. 321, 1, nor the 47th rule for the equity practice of the circuit courts of the United States enables a circuit court to make a decree in equity in the absence of an indispensable party whose rights must necessarily be affected by such decree.

In [*Russell v. Clarke's Executors*](#), 7 Cranch 98, this Court said

"The incapacity imposed on the circuit court to proceed against any person residing within the United States, but not within the district for which the court may be holden, would certainly justify them in dispensing with parties merely formal. Perhaps in cases where the real merits of the cause may be determined without essentially affecting the interests of absent persons, it may be the duty of the court to decree as between the parties before them. But in this case the assignees of Robert Murray & Co. are so essential to the merits of the question and may be so

much affected by the decree that the court cannot proceed to a final decision of the cause till they are parties."

The court here points out three classes of parties to a bill in equity. They are:

1. Formal parties.

2. Persons having an interest in the controversy and who ought to be made parties in order that the court may act on that rule which requires it to decide on and finally determine the entire controversy and do complete justice by adjusting all the rights involved in it. These persons are commonly termed necessary parties, but if their interests are separable from those of the parties before the court, so that the court can proceed to a decree and do complete and final justice without affecting other persons not before the court, the latter are not indispensable parties.

3. Persons who not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience.

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A bill to rescind a contract affords an example of this kind. For if only a part of those interested in the contract are before the court, a decree of rescission must either destroy the rights of those who are absent or leave the contract in full force as respects them while it is set aside and the contracting parties restored to their former condition as to the others. We do not say that no case can arise in which this may be done, but it must be a case in which the rights of those before the court are completely separable from the rights of those absent, otherwise the latter are indispensable parties.

Now it will be perceived that in *Russell v. Clarke's Executors* this Court, after considering the embarrassments which attend the exercise of the equity jurisdiction of the circuit courts of the United States, advanced as far as this: they declared that formal parties may be dispensed with when they cannot be reached;

that persons having rights which must be affected by a decree, cannot be dispensed with; and they express a doubt concerning the other class of parties. This doubt is solved in favor of the jurisdiction in subsequent cases, but without infringing upon what was held in *Russell v. Clarke's Executors* concerning the incapacity of the court to give relief when that relief necessarily involves the rights of absent persons. As to formal or unnecessary parties, See [Wormley v. Wormley](#), 8 Wheat. 451; [Carneal v. Banks](#), 10 Wheat. 188; [Vattier v. Hinde](#), 7 Pet. 266. As to parties having a substantial interest, but not so connected with the controversy that their joinder is indispensable, See [Cameron v. M'Roberts](#), 3 Wheat. 591; [Osborn v. Bank of the United States](#), 9 Wheat. 738; [Harding v. Handy](#), 11 Wheat. 132. As to parties having an interest which is inseparable from the interests of those before the court, and who are therefore indispensable parties, See [Cameron v. McRoberts](#), 3 Wheat. 591; [Mallow v. Hinde](#), 12 Wheat. 197.

In *Cameron v. M'Roberts*, where the citizenship of the other defendants than Cameron did not appear on the record, this Court certified:

"If a joint interest vested in Cameron and the other defendants, the court had no jurisdiction over the cause. If a distinct interest vested in Cameron, so that substantial justice so far as he was interested could be done without affecting the other defendants, the jurisdiction of the court might be exercised as to him alone."

And the grounds of this distinction are explained in [Mallow v. Hinde](#), 12 Wheat. 196, [25 U. S. 198](#) .

Such was the state of the laws on this subject when the Act of Congress of February 28, 1839, 5 Stat. 321, was passed, and the 47th rule for the equity practice of the circuit court of the United States was made by this Court.

The first section of that statute enacts:

"That when, in any

suit at law or in equity commenced in any court of the United States, there shall be several defendants, any one or more of whom shall not be inhabitants of or found within the district where the suit is brought or shall not voluntarily appear thereto, it shall be lawful for the court to entertain jurisdiction and proceed to the trial and adjudication of such suit between the parties who may be properly before it, but the judgment or decree rendered therein shall not conclude or prejudice other parties not regularly served with process or not voluntarily appearing to answer, and the nonjoinder of parties who are not so inhabitants or found within the district shall constitute no matter of abatement or other objection to said suit."

This act relates solely to the nonjoinder of persons who are not within the reach of the process of the court. It does not affect any case where persons having an interest are not joined because their citizenship is such that their joinder would defeat the jurisdiction, and so far as it touches suits in equity, we understand it to be no more than a legislative affirmance of the rule previously established by the cases of *Cameron v. M'Roberts*, 3 Wheat. 591; *Osborn v. Bank of the United States*, 9 Wheat. 738; and *Harding v. Handy*, 11 Wheat. 132. For this Court had already there decided that the nonjoinder of a party who could not be served with process would not defeat the jurisdiction. The act says it shall be lawful for the court to entertain jurisdiction, but as is observed by this Court in *Mallow v. Hinde*, 12 Wheat. 198, when speaking of a case where an indispensable party was not before the court,

"We do not put this case upon the ground of jurisdiction, but upon a much broader ground which must equally apply to all courts of equity, whatever may be their structure as to jurisdiction; we put it on the ground that no court can adjudicate directly upon a person's right without the party's being either actually or constructively before the court."

So that while this act removed any difficulty as to jurisdiction between competent parties regularly served with process, it does not attempt to displace that principle of jurisprudence on which the Court rested the case last mentioned. And the 47th rule is only a declaration, for the government of practitioners and courts, of the effect of this act of Congress and of the previous decisions of the Court on the

subject of that rule. *Hagan v. Walker*, 14 How. 36. It remains true, notwithstanding the act of Congress and the 47th rule, that a circuit court can make no decree affecting the rights of an absent person, and can make no decree between the parties before it, which so far involves or depends upon the rights of an absent person that complete and final justice cannot be done between the parties to the suit without

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affecting those rights. To use the language of this Court in *Elmendorf v. Taylor*, 10 Wheat. 167:

"If the case may be completely decided as between the litigant parties, the circumstance that an interest exists in some other person, whom the process of the court cannot reach -- as if such party be a resident of another state -- ought not to prevent a decree upon its merits."

But if the case cannot be thus completely decided, the court should make no decree.

We have thought it proper to make these observations upon the effect of the act of Congress and of the 47th rule of this Court because they seem to have been misunderstood and misapplied in this case, it being clear that the circuit court could make no decree, as between the parties originally before it, so as to do complete and final justice between them without affecting the rights of absent persons, and that the original bill ought to have been dismissed.

But unfortunately this course was not taken. The two defendants, Mrs. Shields and Bisland, answered denied the allegations of fraud and insisted that so far as they were concerned, the compromise was made in good faith, and they were ready to perform their parts of it according to their respective stipulations.

On the same day that Bisland filed his answer, he filed also a cross-bill against Barrow praying for a specific performance of the contract of compromise.

But this bill also was fatally defective as respects parties. Thomas R. Shields and his other five endorsers had such a direct and immediate interest in the contract of compromise, and that interest was so entire and indivisible, that without their presence no decree on the subject could be made. In [Morgan's Heirs v. Morgan](#), 2 Wheat. 290, a bill was brought by the heirs of a deceased vendor to compel the specific performance of a contract to purchase lands. It was objected that the deceased had a child who was not made a party. Chief Justice Marshall said

"It is unquestionable that all the co-heirs of the deceased ought to be parties to this suit, either plaintiff or defendant, and a specific performance ought not to be decreed until they shall be all before the court."

The next step in the pleadings was that Barrow filed what he calls a petition, in which he recites summarily what had previously been done in the cause and declares himself willing to have the agreement of compromise specifically performed, and prays for leave to amend his bill by making Thomas R. Shields a party, alleging he had become a citizen of Mississippi, and by inserting the following words:

"But if this Honorable Court should be of opinion that the

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said agreement of November 9, 1842, is valid and should not be set aside, and if the said defendant shall acknowledge its validity and binding force, then the orator prays that its specific performance may be decreed according to its true purport and tenor as herein above explained, and he offers to do and perform on his part all the acts which by said agreement he is bound to perform, and he prays that said defendants may be decreed to pay to him the value of the mule, negro, clothing, and flatboats which were taken away from the said plantation as aforesaid; that they be decreed to relieve the said Liza, and the other above-mentioned property, from the judicial mortgages mentioned in this bill, and from the tacit mortgage of the minor children of the said Thomas R. Shields; that the said Thomas R. Shields, when made a party to this suit, both in his individual

capacity and as tutor of his aforesaid minor children, may be ordered to execute a proper and legal reconveyance to your orator, of the above-described property, or that any other order may be made which to this Honorable Court may appear meet and fit for the purpose of again vesting in the orator a good and valid title to the aforesaid property; that the notes described in said act of November 9, 1842, and amounting to \$32,000, may be surrendered to your orator; that the defendants may be decreed to pay to your orator the amount of such of the said last-mentioned notes as may have been drawn by them, and also such of said notes as may be endorsed by them and which may have been protested, and of the protest of which they may have been duly notified before the final decree of this Honorable Court, the whole with interest from the day of protest; and that said defendants may furthermore be decreed to pay the current expenses of the said plantation during the year anterior to said November 9, 1842, and to refund to your orator any amount and expenses which he may have been, or may yet be, compelled to pay on account of privileged claims encumbering said plantation on the day of said act."

The court allowed the above amendment. So that the bill thereafter presented not only two aspects, but two diametrically opposite prayers for relief, resting upon necessarily inconsistent cases, the one being that the court would declare the contract rescinded for imposition and other causes, and the other that the court would declare it so free from all exception as to be entitled to its aid by a decree for specific performance.

Whether this amendment be considered as leaving the bill in this condition or as amounting to an abandonment of the original bill for a rescission of the contract and the substitution of a new bill for a specific performance, it was equally objectionable.

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A bill may be originally framed with a double aspect or may be so amended as to be of that character. But the alternative case stated must be the foundation for

precisely the same relief, and it would produce inextricable confusion if the plaintiff were allowed to do what was attempted here. Story's Eq.Pl. 212, 213; Welford's Eq.Pl. 88; *Edwards v. Edwards*, Jacob 335.

Nor is a complainant at liberty to abandon the entire case made by his bill and make a new and different case by way of amendment. We apprehend that the true rule on this subject is laid down by the vice-chancellor in *Verplanck v. Mercantile Ins. Co.*, 1 Edwards Ch. 46. Under the privilege of amending, a party is not to be permitted to make a new bill. Amendments can only be allowed when the bill is found defective in proper parties, in its prayer for relief, or in the omission or mistake of some fact or circumstance connected with the substance of the case, but not forming the substance itself, or for putting in issue new matter to meet allegations in the answer. See also the authorities there referred to and Story's Eq.Pl. 884.

We think sound reasons can be given for not allowing the rules for the practice of the circuit courts respecting amendments to be extended beyond this, though doubtless much liberality should be shown in acting within it, taking care always to protect the rights of the opposite party. See *Mavor v. Dry*, 2 Sim. & Stu. 113.

To strike out the entire substance and prayer of a bill and insert a new case by way of amendment leaves the record unnecessarily encumbered with the original proceedings, increases expenses, and complicates the suit; it is far better to require the complainant to begin anew.

To insert a wholly different case is not properly an amendment, and should not be considered within the rules on that subject.

After this change had been made in the original bill and Barrow had answered the cross-bill of Bisland, the next step taken in the cause respecting the pleadings and parties was the entry of the following order:

"The motion of the complainant for the delivery of the notes of George S. Guion and Van P. Winder, which have been, by order of the court, delivered into the court, to abide its further order, came on to be heard, and having been fully

argued, and it appearing to the court that all the parties to the second contract set up in the complainant's bill and in the cross-bill of the defendant, Bisland, are not before the court, and it also appearing to the court that the said defendants, Shields and Bisland, are citizens of the State of Mississippi, and that all the

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other parties interested in the execution of the said second contract are citizens of the State of Louisiana, it is therefore ordered that unless the said Shields and Bisland do, on or before the first Monday in August next, file their cross-bill setting up and praying a specific execution of said contract and make all the parties to the second contract, set up in the complainant's bill and residing in Louisiana, defendants, that the complainant, Barrow, shall be at liberty to proceed upon his bill of complaint for a specific execution of the original contract between the parties and for the rescission of the said second contract against such of the parties residing in the State of Mississippi as may fail to comply with this order."

The validity of this order cannot be maintained, and nothing done in consequence of it can be allowed any effect in this Court.

It is apparent that if it were in the power of a circuit court of the United States to make and enforce orders like this, both the article of the Constitution respecting the judicial power and the act of Congress conferring jurisdiction on the circuit courts would be practically disregarded in a most important particular. For in all suits in equity it would only be necessary that a citizen of one state should be found on the side and a citizen of another state on the other to enable the court to force into the cause all other persons, either citizens or aliens. No such power exists, and it is only necessary to consider the nature of a cross-bill to see that it cannot be made an instrument for any such end.

"A cross-bill, *ex vi terminorum*, implies a bill brought by a defendant against the plaintiff in the same suit, or against other defendants in the same suit, or against both, touching the matters in question in the original bill."

Story's Eq.Pl. 389; 3 Dan.Ch. Pr. 1742.

New parties cannot be introduced into a cause by a cross-bill. If the plaintiff desires to make new parties, he amends his bill and makes them. If the interest of the defendant requires their presence, he takes the objection of nonjoinder, and the complainant is forced to amend or his bill is dismissed. If, at the hearing, the court finds that an indispensable party is not on the record, it refuses to proceed. These remedies cover the whole subject, and a cross-bill to make new parties is not only improper and irregular, but wholly unnecessary.

When the defendants, Mrs. Shields and Bisland, had complied with this order of the court and filed their cross-bill, as it was called, against the other endorsers and Thomas R. Shields, and they had come in, as they did, what was their relation to the cause? They surely were not plaintiffs in it. If they were defendants, the court had not jurisdiction, for they as well as

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the complainant were citizens of Louisiana. In truth, they were not parties to the original bill; they were merely defendants to the cross-bill. They had no right to answer the original bill or make defense against it, and of course no decree could be made against them upon that bill.

We do not find it necessary to pursue further an examination in detail of the complicated maze of pleas, demurrers, answers, amendments, and interlocutory orders which followed the filing of this so called, cross-bill. It is enough to say that the defendants to it were never lawfully before the court; that the court never obtained jurisdiction over those of the parties who were citizens of the State of Louisiana, and amongst them was Thomas R. Shields, who, though made a party to the original bill by amendment, as a citizen of Mississippi, pleaded that he was a citizen of Louisiana, and was thereupon stricken out of the original bill, and was only a defendant to the cross-bill; that it never had lawfully before it such parties as were indispensable to a decree for the specific performance of the contract of compromise or for the rescission thereof, and lastly that when it proceeded finally to make a decree condemning certain of the defendants, who were endorsers for Thomas R. Shields, to pay the notes given on the compromise, it gave relief for

which there was a plain, adequate, and complete remedy at law and which was wholly aside from the prayer of the bill for a specific execution of the contract of compromise, which was fully executed in this particular when the notes were given and deposited in the hands of the notary.

This Court regrets that a litigation which has now lasted upwards of thirteen years should have proved wholly fruitless, but it is under the necessity of

Reversing the decree of the circuit court, ordering the cause to be remanded, and the original and cross-bills dismissed.

ORDER

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Eastern District of Louisiana, 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 with directions to that court to dismiss the original and cross-bills in this cause.