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Cross Vs. De Valle

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Court : US Supreme Court

Decided On : 1863

Appeal No. : 68 U.S. 5

Appellant : Cross

Respondent : De Valle

Judgement :

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Cross v. De Valle

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SYLLABUS

1. The well settled principle that aliens may take land by deed or devise, and hold against anyone but the sovereign until office found, exists in Rhode Island as elsewhere, not being affected by that statute which allows them to hold land "provided" they previously obtain a license from the probate court.

2. Although equity will, in some cases, interfere to assert and protect future rights -- as *ex. gr.* to protect the estate of a remainderman from waste by the tenant for

life, or to cut down an estate claimed to be a fee to a life interest only, where the language, rightly construed, gives but an interest for life, or will, at the request of trustees asking protection under a will, and to have a construction of the will and the direction of the court as to the disposition of the property, yet it will not decree *in thesi* as to the future rights of parties not before the court or *in esse.*

3. *Langdale v. Briggs,* 39 Eng.Law and Equity Reps. 194, followed and approved; distinguished, also, from *Lorillard v. Coster* and *Hawley v. James,* 5 Paige 172, 442.

4. A "cross-bill" being an auxiliary bill simply, must be a bill touching matters in question in the original bill. If its purpose be different from that of the original bill, it is not a cross-bill, even although the matters presented in it have a connection with the same general subject. As an original bill it will not attach to the controversy unless it be filed under such circumstances of citizenship &c.;, as give jurisdiction to original bills, herein differing from a cross-bill, which sometimes may so attach.

Halsey devised real estate in Rhode Island to trustees there, in trust for the benefit of his natural daughter, Maria

De Valle, a married woman, during her life, for her separate use; and upon her decease the trustees were directed to convey in fee one-half of the estate to the eldest son of the said daughter living at her decease, if of age, and one-half part to her other children living at her decease, and in default of male issue to her daughters equally. Mrs. De Valle, who was born in 1823, was a native and resident of Buenos Ayres, and had five children born there. After a certain time she came to Rhode Island, and had one child born *there.*

The trustees were directed not to convey the real estate to his grandchildren, unless they should, within five years after being duly informed of his decease, have their permanent residence in the United States, and adopt and use the name of Halsey.

In case his daughter should die without issue living, or with issue who should neglect or refuse to comply with the conditions, the trustees were directed to pay two legacies out of the estate, and convey the residue to a certain Cross, the complainant, if then living, and if he should adopt and use the name of Halsey, or if said complainant should not then be living, or if he should refuse to adopt the name of Halsey, then to a nephew of Cross, upon condition that *he* should adopt the name of Halsey.

Cross now filed his bill in the Circuit Court of the United States for *Rhode Island* against the trustees and the beneficiaries of the trust, setting forth that the trusts in favor of Mrs. De Valle and her children had failed by reason of her and their alienage and incapacity to hold real estate in Rhode Island, and that the trust for the benefit of the complainant was hastened in enjoyment by such failure, claiming that the devise over to him took effect upon the probate of the will, or, that it took effect in favor of the heirs at law, or of the state of Rhode Island as sovereign, and praying that the estate should be conveyed to him by the trustees, or to the heirs at law, or to the state.

A *cross-bill,* or bill purporting to be so, was also filed in the *same court* by heirs at law of Halsey against this complainant,

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Cross, the trustees, and other parties in interest -- the parties in both bills being the same, but being partially reversed -- for the purpose of more distinctly asserting and putting in issue the rights of the heirs at law, as against Mrs. De Valle, Cross, and those other devisees, and so of having the limitations on Mrs. De Valle's life estate declared void, as tending to a perpetuity, and generally of having the rights of the heirs at law declared and protected by the court in its exercise of equitable jurisdiction. The complainants were citizens either of *Massachusetts,* or of *Wisconsin,* or of *Ohio,* or of *New York.* The defendants were all, with one exception, either citizens of *Rhode Island* or *aliens commorant* there. The excepted defendant, Cross, complainant in the original bill, was a citizen of *Louisiana,* and not *commorant* in Rhode Island.

On the subject of alienage, it is necessary to mention that no special enactment had been made in Rhode Island, giving to aliens more ability to hold real estate than they had by the common law. On the contrary, rather, by a statute in force at Halsey's death, it had been enacted as follows: [Footnote 1]

"Courts of Probate shall have power to grant petitions of aliens for leave to purchase, *hold* and dispose of real estate within their respective towns, *provided* the alien petitioning shall, at the time of his petition, be resident within this state, and shall have made declaration, according to law, of his intention to become a naturalized citizen of the United States."

On demurrer the circuit court dismissed the bill, and dismissed also the cross-bill. On appeal here, along with other questions argued -- including the one whether the remainders were void as tending to perpetuities -- were the following, the only ones considered by the court:

1. Was the equitable life estate given by the will to Mrs. De Valle void in consequence of her alienage, so that persons who have interests in remainder have a right to be hastened in the enjoyment of the estate?

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2. If not, did the court err in dismissing the cross-bill, and refusing to declare the future rights of the parties?

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MR. JUSTICE GRIER delivered the opinion of the Court:

The bill alleges that the trusts declared in the will are all void, because of the alienage of Mrs. De Valle and her children, and prays that the trustees may be ordered to convey

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to the complainant as one of these numerous contingent remaindermen who is not an alien, or that the estate be conveyed to the heirs at law of the testator. As it is not alleged that the complainant is one of these heirs, it is not easy to apprehend on what grounds he claims as an alternative *remedy* that the court should decree in favor of those who claim adversely to himself. Perhaps it was to favor the attempt to give jurisdiction to the court to declare the future rights of the parties by converting an original into a cross-bill.

That an alien may take by deed or devise, and hold against anyone but the sovereign until office found, is a familiar principle of law, which it requires no citation of authorities to establish. Nor is it affected by the fact that a statute of Rhode Island will permit aliens to take a license to purchase, which will protect them even as against the state, nor by the fact that a chancellor may not entertain a bill by an alien to enforce a trust which, if conveyed to him, might immediately escheat to the Crown.

Now, as the court rightly decided that Mrs. De Valle took an equitable life estate by the will, defeasible only by action of the sovereign, Cross was in no situation to call upon the court to declare the fate of these numerous contingent remainders.

1. For if the remainders were void because of remoteness and tending to a perpetuity, his own remainder fell with the others.

2. And if declared to be valid, not only the six children of Mrs. De Valle, who are parties to the suit, but possibly and before her death there might be six more, not now *in esse,* who would be entitled to come in before him.

3. The bill demands no such *declaration of future rights,* nor does it suggest how it could be done, or any sufficient reason why the court should pass upon the rights of persons not *in esse.*

4. The bill charges no fault to the devisees except alienage, and before any of the contingencies happen the party entitled to take may be a citizen and capable of taking and holding the estate. In fact, one of the children of defendant was

born in Rhode Island, and therefore is as capable of taking as Cross.

The decree of the court was final and complete as to the case made by the complainant's bill. If the decree had been against Mrs. De Valle, and she had been held incapable of taking, then the heirs might well say, that in such a case the estate should be conveyed to them, and not to Cross, and have their cross-bill for that purpose. But the decree being in favor of Mrs. De Valle, and the bill dismissed, the cross-bill must have the same fate with the original. A cross-bill "is a mere auxiliary suit, and a dependency of the original."

"It may be brought by a defendant against the plaintiff in the same suit, or against other defendants, or against both, but it must be touching the matters in question in the bill, as where a discovery is necessary, or as where the original bill is brought for a specific performance of a contract, which the defendant at the same time insists ought to be delivered up and cancelled, or where the matter of defense arises after the cause is at issue, where in cases at law the defense is by plea *puis darrein continuance.* "

The bill filed by the heirs is for an entirely different purpose from that of Cross. It called upon the court to decree on the future rights of their co-defendants and others not *in esse,* and decree the limitations on the life estate to be void as tending to a perpetuity. This would be introducing an entirely new controversy, not at all necessary to be decided in order to have a final decree on the case presented by the original bill.

As an original bill the court might properly refuse to consider it. First, on account of the parties, and secondly, on account of the subject matter.

The bill is filed in Rhode Island. All the complainants are citizens of states other than Rhode Island or Louisiana, while one of the defendants, Cross, is a citizen of the state last named, and not commorant in Rhode Island. It was admitted that this objection was conclusive, if the bill was an original. The second objection is equally conclusive, whether it be called a cross-bill or an original. A chancellor will

not maintain a bill *merely to declare future rights.* The

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Scotch tribunals pass on such questions by *"declarator,"* but the English courts have never assumed such power. [Footnote 2] In *Langdale v. Briggs,* [Footnote 3] Lord Justice Turner remarks:

"As long as I have known this Court, now for no inconsiderable period, I have always considered it to be settled that the court does not declare future rights, but leaves them to be determined when they may come into possession. In all cases within my experience, where there have been tenancies for life with remainders over, the course has been to provide for the interests of the tenants for life, reserving liberty to apply upon their death."

A remainderman may have a decree to protect the estate from waste, and have it so secured by the trustee as to protect his estate in expectancy. The court will interfere under all needful circumstances to protect his rights, but such cases do not come within the category of mere declaratory decrees as to future rights.

There is also a class of cases in which recommendations or requests in a will to a devisee or legatee have been construed as cutting down an absolute fee into an estate for life, with an equitable remainder to the person indicated by the testator in his request. In such cases the court will entertain a bill during the life of the first taker to have the right of the claimant in remainder established. Nor do these cases infringe upon the doctrine we have stated as to mere declaratory decrees concerning future contingent executory estates.

But there is a class of cases which are exceptions to this rule, and being *exceptional,* only tend to prove the rule. The New York cases of *Lorillard v. Coster,* and *Hawley v. James,* [Footnote 4] cited by the counsel of the heirs at law, are of this character. There the bills were filed by the executors or trustees for their protection, and that they might have a construction of the will, and the direction of the court as to the disposition of the property. In such cases, from necessity, and in order to protect the trustee, the court are compelled to settle

questions as to the validity and effect of contingent limitations

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in a will, even to persons not *in esse,* in order to make a final decree and give proper instructions in relation to the execution of the trusts. [Footnote 5] It is this necessity alone which compels a court to make such cases exceptions to the general rule. But in the present case, no such necessity exists. The court is not called upon to make a scheme of the trusts, nor could they anticipate the situation of the parties in the suit, or those who may be in existence at the death of Mrs. De Valle. The court has no power to decree *in thesi,* as to the future rights of parties not before the court or *in esse.*

Decree affirmed with costs.

[Footnote 1]

Revised Statutes of R.I., 1857, page 351, 21.

[Footnote 2]

Grove v. Bastard, 2 Phillips 621.

[Footnote 3]

39 English Law & Equity 214.

[Footnote 4]

5 Paige 172, 442.

[Footnote 5]

See Bowers v. Smith, 10 Paige 200.

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