ELLIS ET AL. V. DAVIS.

Case No. 4,402.
{4 Woods, 6.}[1]

Circuit Court, D. Louisiana. Nov. Term, 1879.[2]

JURISDICTION OF CIRCUIT COURTS AS COURTS OF EQUITY—SETTING ASIDE DECREE OF PROBATE.

1. The circuit court of the United States for the district of Louisiana has not original jurisdiction of a bill filed by the heirs at law of a testator, to set aside a decree of the probate court of the parish of Orleans, admitting a will to probate and record, and recognizing the legatee therein named as the testator's sole and universal legatee.
2. The case of Broderick's Will, 21 Wall. {88 U. S.} 503, followed, and the case of Gaines v. Fuentes, 92 U. S. 10, distinguished.

In equity. Heard on demurrer to the bill.

The bill was filed by the complainants. {Stephen Percy Ellis and others}, as heirs at law of Mrs. Sarah Ann Dorsey, against Jefferson Davis. The case stated by it was substantially as follows: The defendant Davis was a citizen of the state of Mississippi, the complainants were citizens of other states Mrs. Dorsey died on July 4, 1879, seized and possessed of lands and tenements situate in the states of Mississippi, Louisiana and Arkansas, and on her death her entire estate, movable and immovable, became vested in the complainants and J. Adolphe Dahlgren and Mary Ellis as her sole heirs at law. On May 10, 1879, Mrs. Dorsey by notarial act had constituted the defendant, Jefferson Davis, her agent and attorney in fact for the management of her estate and property, with full power to sue and be sued in her name, to lease, alienate and encumber her real estate, and to purchase real estate and to borrow money and execute notes in her name. The defendant, by virtue of said procuration, had taken possession and control of all the estate and property, deeds and account books of Mrs. Dorsey, and managed the same until her death; and since her death, and up to the time of the filing of the bill, had continued such possession and control, and had refused, and still refuses, to render to complainants any account of his agency. In order to wrong and injure the complainants heirs of Mrs. Dorsey, and prevent them from obtaining possession of said property so in his possession and control, the defendant pretends that Mrs. Dorsey, by her last will, devised and bequeathed to him all of her said property, and threatens to set up said will in any suit at law or in equity which complainants may bring for the recovery of said property.

The bill then sets out in haec verba the alleged will of Mrs. Dorsey, which purported to give and bequeath all her property real, personal and mixed, wherever located, wholly and entirely, without hindrance or qualification, to the defendant, who is described as "my most honored and esteemed friend, Jefferson

Davis, ex-president of the Confederate States, for his own sole use and benefit in fee simple forever." The will contained the following clause: "I do not intend to share the ingratitude of my country towards the man who is in my eyes the highest and noblest in existence." The bill denied that said instrument was the last will and testament of Mrs. Dorsey, and alleged that the same was null and void for the following reasons: 1. That previous to and at the time of writing and signing the same, said Sarah Ann Dorsey was not of sound and disposing mind. 2. That the same was written and signed by her when under the undue influence of said defendant, and which said undue influence excited and aggravated the causes depriving her of a sound and disposing mind, rendering her more susceptible to such undue influences. "3. That the motive, and objects inducing and controlling said testatrix to make said bequest to defendant, as well as said bequest itself, were, under the law of the land, illegal, null and void." "Under the circumstances aforesaid" the complainants insisted "said pretended will, and especially the bequests therein to defendant, are and should be held null and void, on account of the testatrix being, at the time of writing and signing the same, not of sound and disposing mind, and under said undue influence, and the illegality of said bequests."

The bill further averred that the defendant, by an ex parte proceeding before the second district court of the parish of Orleans, in the hope of making said pretended will more effective as a muniment of title and bar to the rights of complainants, had procured the probate and record of the same as the true and valid last will and testament of the said Sarah Ann Dorsey, and obtained au order that, as sole and universal legatee of the said Sarah Ann Dorsey, he be put in possession of all the property, real, personal, and mixed, left by her, and wherever situated; that upon the conclusion of said proceedings the second district court ceased to have any further jurisdiction over said succession; that said proceedings and orders of the second district court, though not res adjudicata against complainants, yet so long as said will and the probate thereof should remain unannulled, would constitute a muniment of title in defendant to the estate of Mrs. Dorsey; that the testimony submitted to second district court to prove that Mrs. Dorsey, at the time of the execution of said pretended will, was of sound mind, was untrue, and if true, insufficient; that the defendant claims title to the property of Mrs. Dorsey, known as "Beauvoir," in Harrison county, Mississippi, by virtue of a deed for the same, executed and delivered to him by Mrs. Dorsey on February 19, 1879. The bill charged that said deed was null and void, because at the time of its execution. Mrs. Dorsey was not of sound mind; that it was executed by her when under the undue influence of the defendant; and that the motives which induced her to make said conveyance were illegal; and that under said agency of May 10, 1878, the defendant had no legal right to purchase any part of the property over which his agency extended; that his consent to the sale of the property to himself without security for the payment of the purchase price, and at a sum below its value, was a viola-

tion of the trust assumed by him as agent; and for these reasons the act of sale should be canceled and annulled.

The bill further charged that owing to the complicated character of the agency created as aforesaid by the act of May 10, 1878, an account of the same could not be properly taken except in a court of equity.

The prayer of the bill was that the alleged will of Sarah Ann Dorsey be canceled and annulled as absolutely void; that the decree of probate thereof, and the decree recognizing the defendant as sole and universal legatee of Mrs. Dorsey, and ordering him to be put in possession of all her property, be canceled and recalled as absolutely null and void; that the alleged sale and conveyance to the defendant by Mrs. Dorsey, of the property known as "Beauvoir," in Harrison county, Mississippi, of February 19, 1879, be canceled and annulled as absolutely null and void, in so far as either said will, decree of probate, decree of possession, or said sale could in any manner be pleaded by defendant as recognizing him as testamentary heir and universal legatee of said Sarah Ann Dorsey, or as a muniment of title or legal bar against complainants or their co-heirs as her legal and sole heirs, and as such entitled to the ownership and possession of all the property belonging to her estate, and which in any manner has come into possession of defendant either as agent or trustee," and that the defendant be decreed to come to a full and fair account of all his actions and doings under said act of procuration of May 10, 1878, and that he furnish the court with a statement of all the property lately belonging to the said Sarah Ann Dorsey which had come into his possession as her agent or by virtue of said alleged will of decrees of said probate court; that he be decreed to surrender to complainants, and if so desired by them, jointly with their co-heirs, the possession of all said property, including all books, papers, title deeds, etc., belonging to said estate, which have come into his possession since May 10, 1878, and that he be enjoined from setting up and pleading said alleged will or said decrees of the probate court as against the complainants as next of kin and legal heirs of said Sarah Ann Dorsey.

The defendant demurred to the bill because the cause of complaint therein set forth was within the exclusive jurisdiction of the second district court for the parish of Orleans, and not within the jurisdiction of this court. The defendant also demurred to so much of the bill as sought to have said will,

and the decrees of second district court admitting the same to probate, canceled and annulled on the ground of undue influence, or of mental unsoundness, and of the illegal motives which induced the testatrix to execute said will; and to so much of the hill as sought, on the grounds set out in the bill, to set aside the conveyance by Mrs. Dorsey, to defendant, of the property known as Beauvoir.

Wm. Reed Mills, for complainants.

Charles E. Fenner, Edgar H. Farrar, and C. L. Walker, for defendant.

WOODS, Circuit Judge. It is clear that unless the will of Mrs. Dorsey, and the decrees of the second district court of the parish of Orleans admitting it to probate and declaring the defendant to be the sole and universal legatee of Mrs. Dorsey, can be successfully attacked in this court, the court cannot grant any of relief prayed for by the bill. For as long as the will and decrees referred to remain in force, the complainants cannot call upon the defendant for an account touching property of which the will makes him the absolute owner, and deprives them of any interest therein or in its proceeds, nor are they in any position to demand the revocation of the deed made by Mrs. Dorsey, to defendant for the property known as "Beauvoir;" for if the deed is not good, the property belongs to the defendant by virtue of the will. In a word, the will, as long as it remains in force, strips them of all interest in the affairs and property of the testator. It is no concern of theirs how the defendant has managed the property, or whether the deed to Beauvoir be valid or invalid. Therefore the demurrer based on the ground that this court had no jurisdiction of the matters set forth in relation to the will and its probate reaches the whole case.

The statement of the averments of the bill above given shows that the suit is brought by the heirs at law of Sarah Ann Dorsey in this court, against Jefferson Davis, to annul a decree of the probate court of the parish of Orleans establishing the will, and declaring the defendant, under its provisions, to be the testamentary heir and universal legatee of the testator. The grounds on which this relief is prayed are, that said testator was not of sound mind, and was under the undue influence of the defendant when she made her will, and that the motives which induced her to make her will in favor of defendant were illegal and against public policy. The case made by the bill, so far as the question of jurisdiction is concerned, is in all material respects the case made by complainants in the case of Broderick's Will, 21 Wall. {88 U. S.} 503. In that case the bill was filed by persons who claimed to be the heirs at law of Broderick.

It was filed on December 16, 1869, and stated that Broderick died September 16, 1859, intestate, seized of real estate and possessed of personal property of large value, and that on February 20, 1860, the defendant McGlynn presented to the probate court of San Francisco, a paper writing purporting to be the last will and testament of Broderick, but which was in fact a forgery, and that the person presenting it, and the persons on whose behalf it was presented, knew it to be a forgery, and that by means of false and perjured

testimony, the said court was induced to admit to probate and record the said paper writing as the genuine last will and testament of said Broderick. The bill prayed that the will might be declared a forgery; that the probate and all subsequent proceedings might be set aside; that the defendants who had purchased lands under order of sale made by the court on the application of the executor of said pretended will might be declared trustees for the complainants and might be compelled to convey to them.

The complainants alleged that they never resided in California or the United States; never heard or had any opportunity of hearing of Broderick's death, or of the probate of his pretended will, until more than eight years after it had been filed for probate, they being illiterate and residing in a remote and secluded region of Australia. The bill was demurred to and dismissed by the circuit court. Upon appeal to the supreme court it was held that a court of equity has no jurisdiction to avoid a will, or to set aside the probate thereof, on the ground of fraud, mistake or forgery, this being within the exclusive jurisdiction of the probate court. Mr. Justice Bradley, in delivering the opinion of the court, after stating the provisions of the law of California for the probate of wills, and for the contesting of the same within one year by any person interested, said: "In view of these provisions it is difficult to conceive of a more corn complete and effective probate jurisdiction, or one better calculated to attain the ends of justice and truth. The question recurs, do the facts stated in the present bill lay a sufficient ground for equitable interference with the probate of Broderick's will, or for establishing a trust as against the purchasers of the estate in favor of the complainants? It needs no argument to show, as it is perfectly apparent, that every objection to the will, or the probate thereof, could have been raised, if it was not raised in the probate court, during the proceedings instituted for proving the will, or at any time within a year after probate was granted, and that the relief sought by declaring the purchasers trustees for the benefit of the complainants would have been fully compassed by denying probate of the will. On the establishment or non-establishment of the will depended the entire right of the parties

and that was a question entirely and exclusively within the jurisdiction of the probate court. In such a case a court of equity will not interfere, for it has no jurisdiction to do so. The probate court was fully competent to afford adequate relief."

The laws of Louisiana with regard to the probate of wills, and the review of decrees admitting wills to probate, are quite as favorable to the attainment of justice as those of California. In the case under consideration there was no obstacle to prevent the complainants from appearing in the probate court and contesting the probate of the will of Mrs. Dorsey, or, if the will had been probated without their knowledge or information, which is not averred, from appealing to the supreme court of the state. The law allowed them one year in which to contest the probate of the will. Instead of resorting to the courts which had exclusive jurisdiction of the subject, they come into this court, and, within less than a year from the probate of the will, file the bill in this case. The proceeding in the probate court was in the nature of a proceeding in rem, and was binding upon all the world unless appealed from and reversed in a direct proceeding. See case of Broderick's Will, ubi supra. But the complainants, entirely ignoring the decree in the probate court, which bound them as well as all others interested, apply to this court to set aside that decree, made by a court which was not only competent, but had the exclusive jurisdiction to make it. If this court could, upon the case made by the present bill, revoke the probate of the will, it might, on the application of Davis, who was a citizen of Mississippi, and upon service upon the heirs, who were citizens of other states, have entertained jurisdiction of an original proceeding to probate the will. But this court has no probate jurisdiction. Gaines v. Chew, 2 How. [43 U. S.] 619; Fouvergne v. New Orleans, 18 How. [59 U. S.] 470; Gaines v. New Orleans, 6 Wall. [73 U. S.] 642; Case of Broderick's Will, 21 Wall. [88 U. S.] 503.

It is claimed, however, that the case of Gaines v. Fuentes, 92 U. S. 10, is authority for this bill. There are general expressions in the opinion in that case which would seem to sustain this claim, but those expressions must be interpreted by the light of the case then before the court. It is to be observed that the case of Broderick's Will is not overruled, but approved, by the case of Gaines v. Fuentes. There must therefore, be material differences of fact between the two cases by which the decisions can be reconciled. These differences are apparent. In the case of Gaines v. Fuentes, the court, In describing the character of the suit, says: "The action is in form to annul the alleged will of 1813, of Daniel Clark, and to recall the decree by which it was probated; but as the petitioners are not heirs of Clark, nor legatees, nor next of kin, and do not ask to be substituted in the place of the plaintiff in error, the action cannot be properly treated as for the revocation of the probate, but must be treated as brought against the devisee by strangers to the estate, to annul the will as a muniment of title, and to restrain the enforcement of the decree, by which its validity was established, so far as it affects their property." The petition in that

case to revoke the probate of the will was originally filed in the second district court of the parish of Orleans, invested with probate jurisdiction. The statement of facts in that case, on which the opinion of the court is founded, shows that the plaintiff in error (Mrs. Gaines) applied on January 18, 1855, to the second district (probate) court of the parish of Orleans, for the probate of the alleged will of Daniel Clark; that by the decree of the state supreme court the will was recognized as the last will and testament of Daniel Clark; that this decree was obtained ex parte, and by its terms authorized any person at any time, who might desire to do so, to contest the will and the probate in a direct action, or as a means of defense, by way of answer or exception, whenever the will should be set up as a muniment of title; that the plaintiff in error subsequently commenced several suits against the petitioners (Fuentes and others) in the circuit court of the United States, to recover sundry tracts of land, situate in the parish of Orleans, in which they were interested, setting up the alleged will as probated as a muniment of title, and claiming under the same as instituted heir of the testator.

From this it appears (1) that the suit to revoke the probate of the will of Daniel Clark was originally begun in the state court, by which the decree of probate complained of was in the first instance rendered; (2) that the decree expressly reserved the right to persons interested to contest the will and its probate either by direct action or by way of exception, whenever the will should be set up as a muniment of title; (3) that suits had been commenced by Mrs. Gaines, claiming title under said will, to recover property in which the petitioners were interested; and (4) that the suit to annul the will and revoke its probate was brought by persons who were not heirs or devisees or next of kin, and did not ask to be substituted in place of the devisee, but was brought by strangers to the estate and blood of the testator, to annul the will as a muniment of title so far as it affected their property, but no further. In these material respects the case of Gaines v. Fuentes differs from the case of Broderick's Will and the case under consideration. This case of Gaines v. Fuentes is therefore not a precedent to control this case, but Broderick's case is.

These complainants were bound by the

decree rendered by the probate court of the parish of Orleans. No fraud is alleged on the part of the defendant in procuring that decree, and complainants had notice of its rendition, and could have taken steps in the probate court to reverse it. They cannot ignore that decree and come into this court to annul it. I am therefore of opinion that this court has no jurisdiction of so much of the case presented by the bill as seeks to annul the will of Mrs. Dorsey and set aside the probate thereof. This is decisive of the whole case, for the right of the complainants to an account from the defendant depends upon the success of their efforts to set aside the will of Mrs. Dorsey and the probate thereof. As long as the decree of the second district court admitting the will to probate, and recognizing the defendant as the sole and universal legatee of Mrs. Dorsey, remains in force, the complainants have no standing which authorizes them to demand an account of the defendant. So if the deed of February 19, 1879, conveying Beauvoir to the defendant, should, for the reasons stated in the bill, be declared void, still the title of defendant to the same would be good and indefeasible under the will of Mrs. Dorsey as long as the will remains of force and the probate thereof unrevoked. In a word, if this court has not jurisdiction to set aside the will of Mrs. Dorsey and revoke its probate, it cannot grant any of the relief prayed for by the bill. Demurrer sustained.

{NOTE. An appeal was prosecuted to the supreme court of the United States by Stephen Percy Ellis, Inez Ruth Ellis, and her husband, Edward Peckham, et al. from this decision, which was, upon due consideration, affirmed in all respects, Mr. Justice Matthews delivering the opinion, in the course of which it was held that the circuit courts of the United States, as courts of equity, have no jurisdiction for the purpose of decreeing the invalidity of a will, and annulling the probate thereof. It was further held that as the defendant Jefferson Davis, did not at any time sustain any relation of trust or confidence towards the complainants, he was not their agent, and any right which they can assert against him for the rents and profits of the estate is altogether dependent upon their title to that estate, and cannot arise until that has been established. "The title which they assert to that is not an equitable, but a legal, title, as heirs at law and next of kin of Sarah Ann Dorsey, and is to be established and enforced by direct proceeding at law for the recovery of the possession which they allege the appellee illegally withheld. There is no ground, therefore, on which the bill can be supported for the account as prayed for." In discussing the Louisiana state decisions bearing upon the subject, Mr. Justice Matthews remarked that the "claim, as has been shown, is properly the subject of an action of revendication, which furnishes a plain, adequate, and complete remedy at law, and consequently constitutes a bar to the prosecution of a bill in chancery." Ellis v. Davis, 109 U. S. 485, 3 Sup. Ct. 327.}

[1] {Reported by Hon. William B. Woods, Circuit Justice, and here reprinted by permission.}

[2] [Affirmed in 109 U. S. 483, 3 Sup. Ct. 327.