JOY ET AL. v. WIRTZ ET AL.

Case No. 7,553.
{1 Wash. C. C. 417.}[1]

Circuit Court, D. Pennsylvania. April Term, 1806.

EQUITY PLEADING—JOINDER OF PARTIES—CREDITORS OF BANKRUPT—RELEASE.

1. A & B were indebted to the plaintiff and others; and A having become insolvent, and a commission of bankruptcy having issued against him, the creditors of A & B joined in releasing A from all the debts due to them from the firm of A & B. The commission of bankruptcy being superseded, the plaintiffs filed a bill on the equity side of the circuit court, to set aside the release. *Held,* that all the parties to the release of A should have joined in the bill; and the demurrer, for want of such parties, was sustained.

2. Where creditors are to be paid out of a particular fund, or are all united in the same transaction, so as to produce privity between them; all should join in a bill which may bring their proceedings into the consideration of a court of chancery.

3. To set aside a release, in such a case, all the parties to it must apply by name to the court; and one cannot act for the whole.

The defendants having been indebted to the plaintiffs {Joy and Laurence}, and to several other persons, and the defendant, Charles Wirtz, having got into insolvent circumstances, his property, under the bankrupt law of this state, was assigned over to certain persons, for the benefit of his creditors; upon which, they executed a release to him of the debts due to them, from Charles & William Wirtz. The commission of bankruptcy, being afterwards superceded, because the petitioning creditor was not such a person, as was intended by the law; the plaintiffs brought their action against William Wirtz, to recover the debt due from Charles and William Wirtz; but failed, in consequence of the above release, given to one of the joint debtors, being pleaded. This bill is filed by two of the creditors, who joined in the release, for the purpose of having it set aside, and for obtaining payment of their demand, out of the estate of the said William Wirtz, in his possession; and to set aside certain voluntary conveyances, made by him, in favour of his wife and children, on the ground of fraud. The defendants demurred to the bill, for want of proper parties, alleging, that all the creditors should have joined.

Mr. Rawle, for defendants, read Hinde, Ch. Prac. 151, 152; 2 Hinde, Ch. Prac. 312. All the creditors should join; or if a part only sue, they should state in their bill, that they sue for themselves, and for the others.

Mr. Tilghman argued, that separate creditors were not obliged to join, nor would it be proper; unless they were all to receive payment out of the same fund appropriated by law, or by a third person, 1 Atk. 282.

BY THE COURT. Where the creditors are to be paid out of a particular fund, or are united in the same transaction, so as to produce a privity between them, all are to join;

and the defendant shall not be obliged to litigate the same question, with each separate creditor. In this case, all the creditors joined in an instrument, which at law discharged the defendant, William Wirtz, from the payment of the debts due to them by himself and Charles Wirtz. The object of this bill, is to set aside this release, which affected all the creditors equally, and in which they all united. The court cannot set it aside in respect of part of the creditors, and leave it to operate against the others; nor can we set it aside as to all, unless all were parties, either by name, or as being represented by a part, suing in the names of all. The demurrer must be sustained; but the plaintiffs have liberty to amend.

{An amended bill was accordingly filed, to which there was a plea in bar for the reason that a party had been omitted, he being a citizen of Pennsylvania. Upon demurrer the plea was overruled. Case No. 7,554.}

[1] {Originally published from the MSS. of Hon. Bushrod Washington, Associate Justice of the Supreme Court of the United States, under the supervision of Richard Peters, Jr., Esq.}