JOY ET AL. V. WIRTZ ET AL.

Case No. 7,554.
{1 Wash. C. C. 517.}[1]

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

EQUITY PLEADING—PLEA TO JURISDICTION—PROPER PARTIES—DECREE.

1. A bill, on the equity side of the court, was filed by all the parties to a release of the defendants, except one, who was a citizen of Pennsylvania. The complainants in the bill were all citizens of another state. To this bill, there was a plea to the jurisdiction of the court, alleging the want of jurisdiction, because one creditor was not joined in the bill. *Held,* that the court had jurisdiction of the case.
2. In chancery, there is a distinction between active and passive parties; the former being such as are so involved in the subject in controversy, as that no decree can be made without their being in court; the latter are such, as that complete relief can be given to those who seek it, without affecting the interests of the passive parties.
3. If a decree can be made, without affecting the rights of a person not made a party, or without his having any thing to perform, necessary to the perfection of the decree; the court

will proceed without him, if he be not amenable to the process of the court, or no beneficial purpose is to be effected by making him a party.

[Cited in West v. Smith, 8 How. (49 U. S.) 410; Abbott v. American Hard-Rubber Co., Case No. 9.]

4. There is no difference between a person, who, on account of his residence beyond seas, cannot be made answerable to the process of the court, and one who, by the laws of the United States, cannot be brought into court; and wherever, in the former case, a person, so circumstanced, need not be made a party, he need not be made a party in the latter case.

5. Care will be taken not to make a decree, which will affect the person who is not party to the suit.

[Cited in Smith v. Ford, 48 Wis. 145, 2 N. W. 134, and 4 N. W. 462.]

This case [Case No. 7,553] was tried at the last term, on a demurrer, for want of parties. The complainants amended their bill, by making all the relators complainants, except A. Dubois, a citizen of Pennsylvania. A plea was put in, stating this in bar, to which there was a demurrer.

It was argued by Lewis and Tilghman, for the plaintiff, that, though all the creditors joined in the release, yet, they expressly released each for himself, and not for the others. Of course they were not connected in interest; there was no privity; and each might be released without the others. But, at any rate, Dubois not being permitted to sue in this court, being a citizen of Pennsylvania, there is no necessity to make him a party, any more than if he was beyond the reach of the process of the court; and that, whenever a person is not amenable to the process of the court, he need not be made a party. So in many other cases. 1 Eq. Cas. Abr. 72–74; 2 Eq. Cas. Abr. 166; 2 Atk. 510; Finch, Prec. 99, 112; Mitf. Eq. Pl 52, 53; Finch, Prec. 592; 1 Ch. Cas. 35; 1 Atk. 282; P. Wms. 33; Hind, Prac. 151.

WASHINGTON, Circuit Justice. When this cause was heard at the last term, on demurrer for want of parties, the court did no more than sustain the demurrer, and direct proper parties to be made. All those who executed the release, have since been made complainants, except Abraham Dubois, a citizen of Pennsylvania; and his not being made a party, is the subject of a plea, which is now to be decided upon. In support of the plea, it is contended, that the court cannot make a decree, without having all the parties, who united themselves together by the release, before them; and that to proceed, without making all the releasors parties, would be to violate one of the fixed principles of a court of equity, which professes to prevent multiplicity of suits. It is admitted, that Dubois cannot be made a party; but this is urged as a reason, why the suit is improperly brought in this court. In deciding who ought to be parties, it is necessary to distinguish between active and passive parties; between those who are so necessarily involved in the subject in controversy, and the relief sought for, that no decree can be made without their being before the court; and such as are formal, or so far passive, that complete relief can be afforded to those who seek it, without affecting the rights of those who are omitted. The Case of Fell, 2 Brown, Ch. 276, presents us with the rule, and with a strong illustration of it. A

second mortgagee brought a bill against the first, to redeem, without making the heir of the mortgagor a party, who was stated to be resident in another country. An objection for want of parties being made, the chancellor observed, that there was a distinction as to proceeding in the absence of parties abroad, between their being active and passive: that the mortgagor, or his heir, cannot be considered as a passive party; because, the decree is, that the second mortgagee shall redeem the first, and that the mortgagor redeem him, or stand foreclosed on this account; the mortgagor or his heir, being an active party, the court cannot proceed without him; and his being a party cannot be dispensed with, though he is not amenable to the process of the court Many other eases might be mentioned, equally strong with that just cited; and, in all of them, the rule is so stubborn, that I doubt, if, under any circumstances, it can be made to bend to the plea of necessity. But, if a decree can be made without affecting the rights of a person not made a party, or without his having any thing to perform necessary to the perfection of the decree; reason, as well as adjudged cases, will warrant the court in proceeding without him, if he be not amenable to the process of the court, or no beneficial purpose is to be effected by making him a party. The object of a court of equity is to prevent a multiplicity of suits, to do complete justice, and to make the performance of its decrees safe to those who must obey them. Hence results the rule, that all persons concerned in the demand in the question in dispute, must be made parties. But this rule is not so inflexible, that to preserve it, the court will not deny relief to those entitled to seek it because there are others, who cannot be made parties, and who need not be so, otherwise than for the sake of principle, on which the rule is founded. This would be to make the great and primary objects of this court, subservient to those which are merely secondary. I admit that the cases cited, apply to defendants. But no case like the present could occur in England; and the reason of those cases, as applicable to defendants, is equally strong when applied to those who are complainants. I shall only add, that there is, in reason, no difference between a person, who, on account of his residence beyond seas, cannot be made answerable to the process of the court, and one who, by the laws of the United States, cannot be brought into this court; and that wherever, in the former case, a person so

circumstanced need not be made a party, he need not be made a party in the latter case.

The court will take care to make no decree to affect Mr. Dubois; and a complete decree may be made, without his being a party. At the same time, to prevent multiplicity of suits, it would be proper to make him a party, if the court could make a decree for or against him. Plea overruled.

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