13 S.Ct. 936
Supreme Court of the United States.

SHEFFIELD FURNACE CO.
v.
WITHEROW.

No. 190. | May 10, 1893.

Appeal from the circuit court of the United States for the northern district of Alabama.

In equity. Bill by James P. Witherow against the Sheffield Furnace Company to foreclose a mechanic's lien. There was a decree for complainant, and defendant appeals. Affirmed.

****937** Statement by Mr. Justice BREWER:

On May 27, 1886, the appellee, plaintiff below, made a proposition to defendant to construct on its premises a blast furnace, for the sum of $124,000; $80,000 to be paid on monthly estimates as the work progressed; the balance to be secured, 'said security to be either a mechanic's lien or first mortgage on all the furnace company's interests in Sheffield, * * * at my option.' This proposition was accepted on June 2d. The work was completed and accepted on April 24, 1888. On June 27, 1888, plaintiff filed in the office of the probate court of the proper county a statement for a mechanic's lien, in conformity with the provisions of the state statute. In this statement the furnace is stated to be situated at Sheffield, Colbert county, Ala., on a site containing about 20 acres, described as follows: 'Twenty acres of land in fractional section 29, * * * contiguous to the city of Sheffield,' etc. On September 5, 1888, plaintiff filed his bill in the circuit court of the United States for the northern district of Alabama to foreclose this mechanic's lien. The bill avers that a contract was entered into for the construction of the furnace, that the amount due was $63,279.43, that a statement of lien had been filed, and prayed for foreclosure and for general relief. In the bill the contract was not set out at length, but it was alleged that it was in writing, and would be produced at the hearing, if necessary. Attached to the bill of complaint was the statement filed in the probate court. A subpoena was duly served upon the defendant on September 6th. On October 1st the defendant applied for and received a copy of the bill. On October 3d it filed a paper which it called a demurrer, but which did not have the certificate of counsel or the affidavit of defendant essential to a demurrer, as required by equity rule 31. On the rule day in November (November 5th) a decree pro confesso was entered, and on December 19th a final decree was also entered, finding the amount due as claimed, the existence of a lien upon the twenty acres, and ordering a foreclosure and sale. At the final hearing the plaintiff produced the lien papers, which were filed in the office of the probate court, the contract between the parties, a certificate from the superintendent of the company defendant of compliance with the terms of the contract, and an affidavit of counsel for the plaintiff to the genuineness of these documents. At the next term, and on February 4, 1889, a motion and petition were filed by defendant in the circuit court to set aside the final decree, which was overruled on the 15th of February, 1889. An appeal to this court was duly perfected.

West Headnotes (5)

[1] **Federal Courts**
Mortgages, liens, bills, notes, security interests, and debt collection

The fact that a state statute gives an action at law to enforce a mechanic's lien will not deprive the federal courts of jurisdiction to foreclose such liens by bill in equity, for the question whether legal or equitable remedies shall be adopted in the federal courts is determined, not by the state practice or legislation, but by the nature of the case, and the foreclosure of a mechanic's lien is essentially an equitable proceeding.

30 Cases that cite this headnote

[2] **Mechanics' Liens**
Extent of Land Affected

Defendant, in a contract for improvements, agreed to give plaintiff, at the latter's option, either a mortgage or a mechanic's lien on the 20 acres of land on which the improvements were placed. Plaintiff, having at the proper time filed in the probate court a statement for a lien, as required by the Alabama statute, filed a bill to foreclose the same, attaching thereto the statement, which described the land as "contiguous to" the city of Sheffield. A foreclosure decree having been entered by default, defendant sought to have it set aside on the ground that under the Alabama statute

the lien was limited to one acre, unless the land was situated within the limits of a city or town; that the bill did not show the property to be within such city or town, and did not describe any particular acre to which the decree could attach. Held, that this ground was untenable, as it was competent for the parties to extend by contract the area of the lien, and as the bill did not affirmatively show that the land was not within a city or town.

4 Cases that cite this headnote

[3] **Equity**

Affidavit and certificate accompanying plea or demurrer

A demurrer is fatally defective, and may be entirely disregarded, when it lacks the affidavit of defendant and the certificate of counsel required by equity rule 31.

8 Cases that cite this headnote

[4] **Equity**

Requisites and validity

After taking a decree pro confesso for want of proper pleadings by defendant, complainant without leave of court, filed an amended bill, but withdrew the same, without furnishing defendant a copy thereof, free of expense, or paying him the costs occasioned to him thereby, as required by equity rule 28. Held that, as plaintiff was never in a position to claim any benefit from his amendment, the withdrawal thereof left the case as if no amendment had been made and plaintiff's right to a final decree was not prejudiced.

9 Cases that cite this headnote

[5] **Equity**

Opening or setting aside

A defendant who has contracted with plaintiff to give a mechanic's lien on a certain lot of ground cannot have a decree pro confesso, foreclosing the same, set aside on the ground that the lot is the absolute property of a third person. If such be the fact the true owner alone is entitled to complain.

1 Cases that cite this headnote

Attorneys and Law Firms

***575** T. R. Roulhac, R. W. Walker, and H. C. Tompkins, for appellant.

***576** Henry B. Tompkins, Wayne MacVeagh, and A. H. Wintersteen, for appellee.

Opinion

Mr. Justice BREWER, after stating the facts in the foregoing language, delivered the opinion of the court.

Inasmuch as the so-called 'demurrer' was fatally defective, in lacking the affidavit of defendant and certificate of counsel required by rule 31, there was no error in disregarding it, and entering a decree pro confesso, at the November rules. Equity rule 18; National Bank v. Insurance Co., 104 U. S. 54, 76. And such decree after the November rules would entitle the plaintiff to a final decree, as taken on December 19th, (equity rule 19; Thomson v. Wooster, 114 U. S. 104, 5 Sup. Ct. Rep. 788,) unless something had taken place intermediate to take away such right. It appears that on the 14th day of November the plaintiff filed an amendment to the original bill, which amendment consisted, substantially, of allegations that the 20-acre tract was within the limits of the city of **Sheffield**, and that the **furnace** and its appurtenances were in the middle of said tract, and occupied more than 1 acre of land, and required, for convenience and profit, the whole of the tract; upon which appears, after the indorsement of the clerk ****938** of its filing, a further indorsement, as follows:

'The filing of this amended bill is erroneous, and the same is withdrawn; no order of the court having been obtained, ordering the filing thereof. Henry B. Tompkins, Sol. for Complainant.'

This proceeding on the part of the plaintiff, it is insisted, destroyed his right to take the final decree, but this is a mistake. While, under equity rule 28, the plaintiff might, after a copy of the bill had been taken out of the office by the defendant, and before plea, answer, or demurrer, amend the bill without order of the court, yet, before he could claim any benefit of such amendment, he was required to pay to the defendant the costs occasioned thereby, and without delay furnish it a copy thereof free of expense, with full reference

to the places where the amendments were to be inserted. As ***577** he had done neither of these things, he could claim no benefit from the filing of the amended bill, and when he entered upon it a withdrawal he left the case to stand as though no amendment had been attempted. Besides, the defendant, being in default, was in no position to take advantage of the plaintiff's action in withdrawing the amendment. There was therefore nothing erroneous in the matter of procedure,—nothing which would compel the court, at a subsequent term, to set aside the decree.

While in this motion and petition there are stated many matters in which it is claimed there was error on account of which the decree should be set aside, and the defendant given leave to plead, and while there is a general allegation that it has a full, perfect, and meritorious defense to the demand set up in the bill, yet it is not alleged that the contract for the building of the **furnace** was not made as stated, or that the statement for lien was not filed, or that the amount claimed to be due was not due and unpaid; so that the case is presented of an effort on the part of defendant to avoid or delay the payment of a just debt. Of course, it need not be said that under such circumstances a court of equity will not strain a point to assist a defendant. It is insisted in this motion to set aside the decree that the 20 acres described in the bill and decree are the absolute property of some other person or persons than the defendant. Even if that be true, we do not see how the defendant is prejudiced. If the plaintiff has made a mistake, and is attempting to sell somebody else's land, the owner is the party who has the right to complain; and the defendant, whose property is not touched, has no ground to object.

But the two principal matters are these: First. It is insisted that this mechanic's lien depends for its validity and scope on the Alabama statutes; that under those statutes the lien is limited to 1 acre, to be selected by the party entitled to the lien, unless the premises are within a city, town, or village, in which case it may extend to the entire lot or parcel of land upon which the improvement is situated; that the bill refers for a description of the property to the statement filed with ***578** the probate court; that such statement describes the land as contiguous to the city of **Sheffield**, and does not show that it is within the limits of any city, town, or village; that therefore the limit to which the lien and decree could go was 1 acre of the tract, and that such acre was not described; that the amendment which was attempted to be made averred that this land was in the city of **Sheffield**, and was a single lot or piece of ground necessary for the operation of the **furnace**; and that only by a consideration of matters thus presented in the amendment could the decree properly extend to the 20 acres. It is a sufficient answer to this contention to say that the bill claimed a lien on the 20 acres; that nothing in the bill or statement affirmatively shows that the land was not within the limits of some city, town, or village; and that the contract which was produced stipulated for security by mechanic's lien or first mortgage on all the **furnace** company's interests in **Sheffield**. Surely, parties can contract to extend the area of property to be covered by a lien. Such a stipulation is tantamount to an equitable mortgage. Ketchum v. St. Louis, 101 U. S. 307, 316, 317; 3 Pom. Eq. Jur. § 1235; Pinch v. Anthony, 8 Allen, 536. The plaintiff, under his contract, was entitled to a written and express mortgage of the entire realty of the company at **Sheffield**, and when he demanded, in his bill, that the statutory lien which he had filed should be extended to the 20 acres, he was only relying upon the promise made by the defendant, that the lien should extend to that tract,—a promise which the defendant might lawfully make, although, as to the excess of ground over one acre, the contract may be only in the nature of an equitable mortgage. This objection to the decree cannot be sustained.

But the main reliance of the defendant is on the proposition that the statutes of Alabama provide for an action at law to enforce a mechanic's lien. This lien being a statutory right, it is insisted that the remedy prescribed by the statute is the one which must be pursued even in the federal courts, and that, as the plaintiff had therefore a right to maintain an action at law in the circuit court, he could not proceed by a suit in equity, which, in the federal courts, can only be maintained ***579** when there is no adequate remedy at law. While the Alabama statutes in force at the time of this suit, (Code Ala. 1886, § 3048,) in terms, authorize the foreclosure of a mechanic's lien by bill in equity, without alleging or proving any special ground of equitable jurisdiction, yet the contention is that the plaintiff cannot avail himself in the federal court ****939** of this last statutory remedy, although he could pursue either in the state courts, because, as stated, if there be an action at law, there cannot, under the settled rules of federal procedure, be also a suit in equity. It certainly would be curious that state legislation which gives to a party the choice, in the state courts, between an action at law and a suit in equity to enforce his rights, enables him to maintain in the federal courts only an action at law, and forbids a suit in equity, when the latter is the ordinary and appropriate method for enforcing such rights; and the foreclosure of a mechanic's lien is essentially an equitable proceeding. As said by Mr. Justice Field, speaking for the court in Davis v. Alvord, 94 U. S. 545, 546: 'It is essentially a suit in equity, requiring specific directions for the sale of the property, such as are usually given upon the foreclosure of mortgages and sale of

mortgaged premises.' Improvement Co. v. Bradbury, 132 U. S. 509, 10 Sup. Ct. Rep. 177. And it may well be affirmed that a state, by prescribing an action at law to enforce even statutory rights, cannot oust a federal court, sitting in equity, of its jurisdiction to enforce such rights, provided they are of an equitable nature. In Robinson v. Campbell, 3 Wheat. 212, 222, it was said: 'A construction, therefore, that would adopt the state practice in all its extent, would at once extinguish, in such states, the exercise of equitable jurisdiction. The acts of congress have distinguished between remedies at common law and in equity, yet this construction would confound them. The court, therefore, thinks that to effectuate the purposes of the legislature the remedies in the courts of the United States are to be at common law or in equity, not according to the practice of state courts, but according to the principles of common law and equity, as distinguished and defined in that country from which we derive our knowledge of those principles.' ***580** Hooper v. Scheimer, 23 How. 235; Sheirburn v. Cordova, 24 How. 423; Whitehead v. Shattuck, 138 U. S. 146, 152, 11 Sup. Ct. Rep. 276; Scott v. Neely, 140 U. S. 106, 11 Sup. Ct. Rep. 712; Smyth v. Banking Co., 141 U. S. 656, 12 Sup. Ct. Rep. 113.

But, further, the defendant contends that by the state law the lien was limited to 1 acre of ground. The plaintiff claims that by virtue of his contract, and the filing of his statement of lien, he was entitled to a decree subjecting a tract of 20 acres to the satisfaction of his debt. He therefore claims rights of an equitable nature, arising from something more than the statute, and based partly upon his contract. Certainly, such a claim as that is one of an equitable nature, and to be adjudicated only in a court of equity.

These are all the matters of importance presented. We see no substantial error in the record, and the decree is affirmed.

Parallel Citations

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