

Cameron v. McRoberts.

The case of the *Attorney-General* and *Lord Weymouth* (Ambler 20) was also pressed upon the court, as strongly supporting that of *Roper v. Radcliffe*, and as bearing upon the present case. The first of these propositions might be admitted; although it is certain, that the mortmain act, upon which that case was decided, is even stronger in its expression than the statute against papists, and the Chancellor so considers it; for, he says, whether the surplus be considered as money or land, it is just the same thing, the statute making void all charges and incumbrances on land, for the benefit of a charity. But if this case were, in all respects, the same as *Roper v. Radcliffe*, the observations which have been made upon the latter would all apply to it. It may be remarked, however, that in this case, the Chancellor avoids expressing any opinion upon the question, whether the money to arise from the sale of *the land, was to be taken as personalty or land; and, although he mentions the case of *Roper v. Radcliffe*, he adds, that he does not depend upon it, as it was immaterial, whether the surplus was to be considered as land or money, under the mortmain act.

Upon the whole, we are unanimously of opinion, that the legacy given to Thomas Craig, in the will of Robert Craig, is to be considered as a bequest of personal estate, which he is capable of taking for his own benefit.

Certificate accordingly.

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Decree.—Jurisdiction.

The circuit courts have no power to set aside their decrees in equity, on motion, after the term at which they are rendered.¹

Where McR., a citizen of Kentucky, brought a suit in equity, in the circuit court of Kentucky, against C. C., stated to be a citizen of Virginia, and E. J. and S. E., without any designation of citizenship; all the defendants appeared and answered; and a decree was pronounced for the plaintiff: it was *held*, that if a joint interest vested in C. C. and the other defendants, the court had no jurisdiction over the cause; but that if a distinct interest vested in C. C., so that substantial justice (so far as he was concerned) could be done, without affecting the other defendants, the jurisdiction of the court might be exercised as to him alone.

APPEAL from the Circuit Court for the district of Kentucky. *John McRoberts, stated in the pleadings to be a citizen of the state of Kentucky, brought his suit in equity, in the district court of Kentucky (said court then having by law the jurisdiction of a circuit court) against Charles Cameron, stated to be a citizen of Virginia, and Ephraim Jackson, Samuel Emerson, and other parties named in the bill, without any designation of citizenship. The defendant Cameron was not served with process, but appeared and answered the bill, as did the other defendants. The cause was heard, and at the November term of said court, in 1804, a final decree was pronounced for the plaintiff McRoberts.

In 1805, the defendant Cameron filed a bill of review, which is now pending, and at the May term of the circuit court of 1811, moved the court to set aside the decree, and to dismiss the suit, because the want of jurisdiction appeared on the record; and upon the allegation, that the said Jackson,

¹ *McMicken v. Perin*, 18 How. 507; *Scott v. Blaine*, Bald. 287; *Brush v. Robbins*, 3 McLean 486.

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Emerson and the other parties to the bill, were, in fact, citizens of the state of Kentucky ; on which motion, the following questions arose : 1st. Has the circuit court power and jurisdiction over a judgment or decree, so as to set the same aside, after the term at which it was pronounced ? 2d. If it has, could it be exercised, after the lapse of five years ? 3d. Had the district court jurisdiction of the cause as to the defendant Cameron and the other defendants ? If not, had the court jurisdiction as to the defendant Cameron alone ? *Upon which questions, the judges of the circuit court being [*593 divided in opinion, the same were ordered to be certified to this court.

The cause was argued, at the last term, by *M. D. Hardin*, for the plaintiff, McRoberts ; no counsel appearing for the defendant.

March 11th, 1818. At the present term of this court, it was ordered to be certified to the circuit court for the district of Kentucky as follows, viz :

CERTIFICATE.—This cause came on to be heard, on the statement of facts contained in the record, and on the questions on which the opinions of the judges of the circuit court were opposed, and which were, therefore, at the request of one of the parties, adjourned to this court, and was argued by counsel. On consideration whereof, this court doth order it to be certified to the circuit court of the United States for the district of Kentucky. 1st. That in this case, the court had not power over its decree, so as to set the same aside, on motion, after the expiration of the term in which it was rendered. 2d. Consequently, such power cannot be exercised after the lapse of five years. 3d. If a joint interest vested in Cameron and the other defendants, the court had no jurisdiction over the cause. If a distinct interest vested in Cameron, so that substantial justice (so far as he was interested) *could [*594 be done, without affecting the other defendants, the jurisdiction of the court might be exercised as to him alone.