390 U.S. 102

PROVIDENT TRADESMENS BANK & TRUST CO., Administrator of the Estate of John R. Lynch, etc., Petitioner,

v.

George M. PATTERSON, Administrator of the Estate of Donald Cionci et al.

No. 28.

Argued Nov. 6 and 7, 1967.

Decided Jan. 29, 1968.

Action against automobile owner's insurer and estate of deceased driver for declaratory judgment that automobile was being operated by driver within scope or permission granted to him by insured when automobile collided with truck. The United States District Court for the Eastern District of Pennsylvania, 218 F.Supp. 802, entered judgment adverse to insurer, and it appealed. The United States Court of Appeals, Third Circuit, two judges dissenting, 365 F.2d 802, vacated judgment and remanded cause with directions to dismiss. Certiorari was granted. The Supreme Court, Mr. Justice Harlan, held that where automobile owner's interest in claims against his insurer was affected by action but it was not feasible to join him as a defendant because such joinder would have eliminated diversity jurisdiction, he did not have an absolute, substantive right, unaffected by federal rules, to be joined and thus was not an "indispensable party" whose nonjoinder required dismissal of action.

Judgment of the Court of Appeals vacated and case remanded.

1. Courts ⇐383(1)

United States Supreme Court granted certiorari to consider the serious challenge to scope of newly amended joinder rule. Fed.Rules Civ.Proc. rule 19, 28 U.S.C.A.

2. Declaratory Judgment ⇐295
Federal Civil Procedure ⇐222

Where automobile owner's interest in claims against his insurer was affected by action for declaratory judgment that his automobile was being operated within scope of permission given by him but it was not feasible to join him as a defendant because such joinder would have eliminated diversity jurisdiction, he did not have an absolute, substantive right, unaffected by federal rules, to be joined and thus was not an "indispensable party" whose nonjoinder required dismissal of action. Fed.Rules Civ.Proc. rule 19, 28 U.S.C.A.

See publication Words and Phrases for other judicial constructions and definitions.

3. Judgment ⇐729

If defendant has failed during trial to assert his interest in avoiding multiple litigation, inconsistent relief or sole responsibility for a liability he shares with another, it is proper under joinder rule to consider that interest foreclosed. Fed.Rules Civ.Proc. rule 19(b), 28 U.S.C.A.

4. Judgment ⇐707

Fact that one who is not a party to an action is not bound by judgment rendered does not mean that court may never issue a judgment that, in practice, affects a nonparty or that court may always proceed without considering the potential effect on nonparties simply because they are not bound in the technical sense. Fed.Rules Civ.Proc. rule 19(a), 28 U.S.C.A.

5. Appeal and Error ⇐187(3)

When necessary, the Court of Appeals should, on its own initiative, take steps to protect a nonparty where the judgment may, as a practical matter, impair or impede his ability to protect his interest in the subject matter. Fed. Rules Civ.Proc. rule 19(a), 28 U.S.C.A.

6. Federal Civil Procedure ⇐201

Portion of joinder rule providing that where person whom it might be

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court concluded that the Rule was inapplicable because "substantive" rights are involved, and substantive rights are not affected by the Federal Rules. Although the

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court did not articulate exactly what the substantive rights are, or what law determines them, we take it to have been making the following argument: (1) there is a category of persons called "indispensable parties"; (2) that category is defined by substantive law and the definition cannot be modified by rule; (3) the right of a person falling within that category to participate in the lawsuit in question is also a substantive matter, and is absolute.[13]

[11–13] With this we may contrast the position that is reflected in Rule 19. Whether a person is "indispensable," that is, whether a particular lawsuit must be dismissed in the absence of that person, can only be determined in the context of particular litigation.[14] There is a large category, whose limits are not presently in question, of persons who, in the Rule's terminology, should be "joined if feasible," and who, in the older terminology, were called either necessary or indispensable parties. Assuming the existence of a person who should be joined if feasible, the only further question arises when joinder is not possible and the court must decide whether to dismiss or to proceed without him. To use the familiar but confusing terminology, the decision to proceed is a decision that the absent person is merely "necessary" while the decision to dismiss is a decision that he is "indispensable."[15]

tee's suggestions. Where the new version emphasizes the pragmatic consideration of the effects of the alternatives of proceeding or dismissing, the older version tended to emphasize classification of parties as "necessary" or "indispensable." Although the two approaches should come to the same point, since the only reason for asking whether a person is "necessary" or "indispensable" is in order to decide whether to proceed or dismiss in his absence and since that decision must be made on the basis of practical considerations, Shaughnessy v. Pedreiro, 349 U.S. 48, 75 S.Ct. 591, 99 L.Ed. 868, and not by "prescribed formula," Niles-Bement-Pond Co. v. Iron Moulders' Union Local No. 68, 254 U.S. 77, 41 S.Ct. 39, 65 L.Ed. 145, the Committee concluded, without directly criticizing the outcome of any particular case, that there had at times been "undue preoccupation with abstract classifications of rights or obligations, as against consideration of the particular consequences of proceeding with the action and the ways by which these consequences might be ameliorated by the shaping of final relief or other precautions." An excellent example of the cases causing apprehension is Parker Rust-Proof Co. v. Western Union Tel. Co., 105 F.2d 976 (C.A.2d Cir.). Judge Swan, writing for a panel that included Judges L. Hand and A. N. Hand, stated that a nonjoined person was an "indispensable" party to a suit to compel issuance of a patent, but went on to say that "as the object of the rule respecting indispensable parties is to accomplish justice between all the parties in interest, courts of equity will not suffer it to be so applied as to defeat the very purposes of justice." Id., at 980. On this basis, the Court of Appeals reversed the District Court's dismissal of the action for nonjoinder. Under the present version of the Rule, the same result would be reached for, ultimately, the same reasons. The present version simply avoids the purely verbal anomaly, an indispensable person who turns out to be dispensable after all.

13. One commentator has stated that "[i]f this [the Court of Appeals' position in the present case] is sound, amended Rule 19 would be invalid. But there is no case support for the proposition that the judge made doctrines of compulsory joinder have created substantive rights beyond the reach of the rulemaking power." 2 Barron & Holtzoff, Federal Practice & Procedure § 512, n. 21.14 (1967 Supp.) (Wright ed.).

14. As the Court has before remarked, "[t]here is no prescribed formula for determining in every case whether a person * * * is an indispensable party * * *." Niles-Bement-Pond Co. v. Iron Moulders' Union Local No. 68, 254 U.S. 77, at 80, 41 S.Ct. 39, 41, 65 L.Ed. 145.

15. The Committee Note puts the matter as follows: "The subdivision [19(b)]

The

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decision whether to dismiss (i. e., the decision whether the person missing is "indispensable") must be based on factors varying with the different cases, some such factors being substantive, some procedural, some compelling by themselves, and some subject to balancing against opposing interests. Rule 19 does not prevent the assertion of compelling substantive interests; it merely commands the courts to examine each controversy to make certain that the interests really exist. To say that a court "must" dismiss in the absence of an indispensable party and that it "cannot proceed" without him puts the matter the wrong way around: a court does not know whether a particular person is "indispensable" until it has examined the situation to determine whether it can proceed without him.

The Court of Appeals concluded, although it was the first court to hold, that the 19th century joinder cases in this Court created a federal, common-law, substantive right in a certain class of persons to be joined in the corresponding lawsuits.[16] At the least, that was not the

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way the matter started. The joinder problem first arose in equity and in the earliest case giving rise to extended discussion the problem was the relatively simple one of the inefficiency of litigation involving only some of the interested persons. A defendant being sued by several cotenants objected that the other cotenants were not made parties. Chief Justice Marshall replied:

"This objection does not affect the jurisdiction, but addresses itself to the policy of the Court. Courts of equity require, that all the parties concerned

uses the word 'indispensable' only in a conclusory sense, that is, a person is 'regarded as indispensable' when he cannot be made a party and, upon consideration of the factors above mentioned, it is determined that in his absence it would be preferable to dismiss the action, rather than to retain it."

16. Numerous cases in the lower federal courts have dealt with compulsory joinder, and the Court of Appeals concluded that principles enunciated in those cases required dismissal here. However, none of the cases cited here or below presented a factual situation resembling this case: the error made by the Court of Appeals was precisely its reliance on formulas extracted from their contexts rather than on pragmatic analysis. Moreover, although the Court of Appeals concluded that the "distilled essence" of earlier cases is that the question whether to dismiss is "substantive" and that "Rule 19 does not apply to the indispensable party doctrine," it found no cases actually so holding.

One of the reasons listed by the Committee Note for the change in the wording of Rule 19 was "Failure to point to correct basis of decision." The imprecise and confusing language of the original wording of the Rule produced a variety of responses in the lower courts. In some cases a formulaic approach was employed, making it difficult now to determine whether the result reached was proper or not. Other cases demonstrate close attention to the significant pragmatic considerations involved in the particular circumstances, leading to a resolution consistent with practical and creative justice. For examples in the latter category, see Roos v. Texas Co., 23 F.2d 171 (C.A. 2d Cir.) (L. Hand, J.) (decided prior to adoption of Fed.Rules Civ.Proc.); Kroese v. General Steel Castings Corp., 179 F.2d 760, 15 A.L.R.2d 1117 (C.A.3d Cir.) (Goodrich, J.); Stevens v. Loomis, 334 F.2d 775 (C.A.1st Cir.) (Aldrich, J.). It is interesting that the only judicial recognition found by the Court of Appeals of its view that indispensability is a "substantive" matter is a footnote in the last-cited case attributing to the (then) proposed new formulation of Rule 19 "the view that what are indispensable parties is a matter of substance, not of procedure." Id., at 778, n. 7. Taken in context, Judge Aldrich's statement refers simply to the view that a decision whether to dismiss must be made pragmatically, in the context of the "substance" of each case, rather than by procedural formula. The statement is hardly support for the proposition that a court of appeals may ignore Rule 19's command to undertake a practical examination of circumstances.