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# Indispensable Parties.

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## INDISPENSABLE PARTIES

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Problems of fundamental error, particularly those of indispensable parties, are as troublesome and perplexing as any that may occur in a lawyer's practice. Failure to join persons who are indispensable to a suit is fundamental error[1] and can be raised at any stage in the progress of a case from the moment it is filed through and including its final disposition in the Supreme Court of Texas.[2] The purpose of this article is to suggest to Texas lawyers a usable formula for determining who is an "indispensable party."

### A Hindsight View

The exemplary case of *Mitchell v. Mitchell*,[3] a will construction suit, was filed by the plaintiff in the trial court in 1949. After disposition in the lower courts, the case was appealed ultimately to the Supreme Court of Texas where a judgment was rendered on June 27, 1951.[4] On July 12, 1951, in the first point of their motion for rehearing,

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1 "If [the absentee] were truly an indispensable party to the suit, we would agree that the error in proceeding in his absence was fundamental error which could and should have been noticed by the Court of Civil Appeals on its own motion." Petroleum Anchor Equip., Inc. v. Tyra, 406 S.W.2d 891, 892 (Tex. Sup. 1966).

2 McCauley v. Consolidated Underwriters, 157 Tex. 475, 304 S.W.2d 265 (1957); Ramsey v. Dunlop, 146 Tex. 196, 205 S.W.2d 979 (1947) concurring opinion; and cf. Newman v. King, 433 S.W.2d 420 (Tex. Sup. 1968). Because this article is concerned with fundamental error, cases where pleas in abatement for misjoinder were timely filed have been largely disregarded. A litigant is in a considerably better position when misjoinder is discovered at an early stage in the proceedings so that a proper objection may be timely filed. The criteria discussed in this article for identifying indispensable parties can be applied at any stage in the development of a case, and the specter of fundamental error due to misjoinder will be wholly avoided by a sufficient and timely plea. See Royal Petroleum Corp. v. Dennis, 160 Tex. 392, 332 S.W.2d 313 (1960); and cf. Petroleum Anchor Equip., Inc. v. Tyra, *supra* note 1, at 894, "In *Dennis* we had no occasion to determine whether the absent persons were indispensable parties; the defendants had insisted by plea in abatement that the absent persons be joined, and we held that the trial court properly sustained the plea."

3 This case was twice appealed through the Texas appellate courts; 235 S.W.2d 744 (Tex. Civ. App.—Galveston 1950, jdgmt rev'd); 151 Tex. 1, 244 S.W.2d 803 (1951); 298 S.W.2d 236 (Tex. Civ. App.—Beaumont 1957, jdgmt mod'd); 157 Tex. 346, 303 S.W.2d 352 (1957).

4 Mitchell v. Mitchell, 151 Tex. 1, 244 S.W.2d 803 (1951).

the respondents presented a new and independent contention never before raised by any party to the suit. The respondents charged that the courts had erred in exercising jurisdiction to construe the will of Aurelia Mitchell because numerous beneficiaries under the will were not made parties to the suit; because they were not represented by the only class described in the suit; and because they were indispensable persons in whose absence no court could proceed to judgment. More than six months later the Supreme Court denied rehearing without a written opinion.[5] Not until June 19, 1957, however, did it become settled that in the absence of those persons the issues in the first appeal had in fact been finally decided by the court construing the Mitchell will.[6] Upon deciding the will construction issues presented on the first appeal, the Supreme Court remanded the case to the trial court for an accounting. Before the trial court took up the remanded accounting phase of the suit, the former absentees became parties and raised anew the will construction issues which had been decided in the first appeal.

On the second appeal, rather than holding simply that the judgment in the first appeal was *res judicata,* or that the first decision was the law of the case, the Supreme Court dealt with the contentions of the former absentees on their merits. The court held that the judgment in the second appeal on the reasserted issues should be no different from the judgment in the first appeal under the doctrine of *stare decisis.*[7] The court held as follows:

> When the Supreme Court once determines the true construction of a will or other written instrument that construction is binding in all subsequent suits involving the same subject matter even though the parties in subsequent suits may not be the same as in the original suit. No reason is perceived why that doctrine is not applicable in this proceeding. It is claimed that the original suit was not an adversary proceeding in that necessary parties were lacking in the case because the remainderman and many of the life beneficiaries were not represented in that class action. That contention was presented to this court in the former appeal. . . . We overruled that motion and upon the authority of that ruling the contention now presented is not sustained.
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> It is recognized, however, that the doctrine of stare decisis does not absolutely bind this court to follow its prior decisions. We have the power to overrule our decision in the former appeal

[5] *Id.*
[6] Mitchell v. Mitchell, 157 Tex. 346, 303 S.W.2d 352 (1957).
[7] *Id.*

> of this case and declare that the testatrix intended to constitute royalties as income. We should exercise that power if convinced, and only if convinced, that our prior decision was not sound and that good reasons exist for overruling it, but we are not at all convinced that our prior construction of this will is erroneous. On the contrary, we are of the opinion that it was sound, and we accordingly reaffirm it.[8]

It is important to note that the court conspicuously avoided treating its earlier *judgment* as binding on the former absentees; rather it held that the doctrine of *stare decisis* made the court's former holdings dispositive on the second appeal of the issues unless good reasons existed for departure from those holdings.

Imagine the concern of those petitioners and lawyers who had won a judgment in the first appeal to the Supreme Court when they became faced with a troublesome "parties" problem initially raised by the respondents in their motion for rehearing. Their concern was preserved through more than six years of subsequent litigation in that suit. The Texas cases provide no usable guidelines for determining which persons have such an interest in the subject matter of a suit that, in their absence, the courts are without power to proceed to judgment.

## A Present View

The Supreme Court of Texas accepted an opportunity to write in this complex area in July of last year when it granted the petitioner's application for writ of error in the case of *Snider v. Mason*.[9] That opportunity, however, was never consummated because by agreement of the parties the petitioner's application for writ of error was dismissed in October.[10] The facts before the court in that cause presented a text book example for analyzing complex parties problems.

The suit was brought by petitioner E. D. Snider, a judgment creditor, to avoid two deeds allegedly executed to defraud him. Based on jury findings, the trial court rendered judgment for Snider. The Court of Civil Appeals reversed and remanded, stating, "[i]t seems well settled in this State that one who seeks to cancel a deed must have all parties to the deed made parties in the suit before relief can be granted." That holding required the joinder of James Mason, admin-

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8 *Id.*
9 Snider v. Mason, 11 Tex. Sup. Ct. J. 514 (1968).
10 Snider v. Mason, 12 Tex. Sup. Ct. J. 58 (1968).

istrator of the estate of the deceased Mrs. Rickard and Mr. Rickard, as the grantors of the first disputed deed; James N. Phenix, C. A. Keeling, and Bill Wilder, as the grantees of the first deed and grantors of the second disputed deed; and James Mason, individually, and Robert Mason, as grantees of the second deed. Although no party raised any objection in the trial court or point of error upon appeal asserting the failure to join other persons as parties to the action, the Court of Civil Appeals held that "[s]uch parties are necessary parties and a failure to join them in the suit is fundamental error of which [it] must take notice."[11]

In 1964, during the pendency of a damage suit filed by Snider against Don and Willie Mae Rickard, husband and wife, the Rickards executed the first of the disputed deeds to their lawyers. That deed purported to convey all of Mrs. Rickard's interests in eleven tracts of land, her separate property, allegedly worth $5,000.00, to James N. Phenix, C. A. Keeling, and Bill Wilder, partners in the law firm of Phenix, Keeling, and Wilder. In 1965 after Snider had obtained a $3,000.00 judgment against the Rickards in the damage suit, the other disputed deed was executed by the lawyers individually to Mrs. Rickard's two brothers, James and Robert Mason. Corresponding with the execution of the latter deed, the brothers executed a note to the lawyers for $2,000.00 secured by a deed of trust lien on the interest formerly owned by Mrs. Rickard in the eleven tracts. In his suit Snider joined no parties other than the defendants James Mason, individually and as administrator of Mrs. Rickard's estate, and Robert Mason.

There was disputed testimony that at the time the first deed was executed, Mrs. Rickard owed the lawyers $2,000.00 in attorneys' fees for past legal services as well as for representing her in the damage suit and that she owed her brothers in excess of $3,000.00 for money she had borrowed from them. However, the jury refused to find that Mrs. Rickard owed valid debts either to the lawyers or to her brothers; rather it found that the deed from her to the lawyers and the deed from them to her brothers were executed with intent to delay, hinder, or defraud her creditors, and further that the lawyers as her grantees knew or should have known of such intent on the part of Mrs. Rickard. In support of the trial court's judgment, a finding was deemed that the brothers knew of such intent on the part of either Mrs. Rickard or

[11] Mason v. Snider, 425 S.W.2d 377, 378 (Tex. Civ. App.—Tyler 1968, writ granted and subsequently dism'd by agreement).

the lawyers, or at least that they were in possession of facts sufficient to put them on notice. Ordinarily those findings would require a judgment declaring the deeds void as to Snider.[12] But "[j]urisdiction over indispensable parties to a suit is as essential to the court's right and power to proceed to judgment as is jurisdiction over the subject matter."[13]

If in the *Snider* case "indispensable parties" were absent from the trial and appeal, the judgment of the Court of Civil Appeals reversing and remanding the cause to the trial court for proper joinder of the absentees was correct. However, the statement by the Court of Civil Appeals that all parties to a deed must be made parties to a suit before relief cancelling that deed can be granted is erroneous and was recently expressly disavowed by the Supreme Court of Texas.[14] Nonetheless, indispensable persons whose joinder is required by Tex. R. Civ. P. 39(a) must be made parties. "[P]ersons having a 'joint interest' within the meaning of paragraph (a) [of Rule 39], properly interpreted, are indispensable parties. . . ."[15] A proper analysis of the parties problem in the *Snider* case depends entirely upon a determination whether Messrs. Rickard, Phenix, Keeling, and Wilder are "persons having a joint interest" within the meaning of the rule.[16]

## AMENDED FEDERAL RULE 19

The source of the Texas rule is FED. R. CIV. P. 19(a) as enacted in 1937 and as it existed unchanged until it was completely rewritten in the 1966 amendments. Prior to those amendments, it was suggested that Rule 19(a) should be interpreted in light of earlier case law, and factors are summarized which among others would be useful in determining persons who are indispensable parties in the federal practice.[17] The view of the Subcommittee on Interpretation of the Texas

12 TEX. REV. CIV. STAT. ANN. art. 3996, which reads as follows: "Every gift, conveyance, assignment, or transfer of, or charge upon, any estate real or personal, every suit commenced, or decree, judgment or execution suffered or obtained and every bond or other writing given with intent to delay, hinder, or defraud creditors, purchasers, or other persons of or from what they are, or may be, lawfully entitled to, shall, as to such creditors, purchasers or other persons, their representatives or assigns, be void. This article shall not affect the title of a purchaser, for valuable consideration, unless it appear that he had notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor."

13 Petroleum Anchor Equip., Inc. v. Tyra, 406 S.W.2d 891 (Tex. Sup. 1966).

14 *Id.* at 894.

15 *Id.* at 893.

16 Tex. R. Civ. P. 39(a).

17 WRIGHT, FEDERAL COURTS § 70 (1963). See also 2 BARRON & HOLTZOFF, FEDERAL PRACTICE AND PROCEDURE §§ 511, 512, and 516 (Wright ed. 1961); 3A MOORE, FEDERAL PRACTICE, ch. 19 (2d ed. 1968).

Rules[18] was that Tex. R. Civ. P. 39a should likewise be interpreted in light of previous practice.

In determining indispensable parties, the real problem is whether the choice of parties by the litigants is to be overborne by the interests of potential, but absent, parties and by the social interest in the orderly and expeditious administration of justice.[19] Although the interest of an absentee can never be legally affected when he is not a party to a suit or represented therein, the fact that a judgment will not be technically binding on him is not a controlling factor.[20]

The label "indispensable" is used if the connection of the absentee with the subject matter of the action is so close that a judgment entered in his absence must be reversed because of his absence regardless of a proper appellate predicate for the error in failing to join him. That there should be such a classification of parties is sensible, but judicial attempts to indicate when the label is legally appropriate have not been entirely satisfactory. Neither is the particular language of the rule helpful in this regard. "[T]he conceptual test of a 'joint interest' is made the dividing line between proper parties, on the one hand, and necessary or indispensable parties on the other, while once that line has been crossed the rule offers no guidance in determining whether a particular party with a 'joint interest' is indispensable or merely necessary."[21] Recognizing the circular and therefore unhelpful approach taken by some courts in holding that for purposes of determining party problems, the term "joint interest" means any interest which under pre-rule practice constituted the owner of such interest a necessary or indispensable party, Professor Wright summarizes factors largely derived from antecedent case law in the following comment:

> Modern scholarship has pointed the way to a more realistic rule for classifying parties. On this view, a party would be either necessary [insistable] or indispensable if in his absence complete relief cannot be accorded to the existing parties, or if he has some interest in the controversy and is so situated that disposition of the action in his absence might as a practical matter impair his

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18 8 Tex. B.J. 19 (1945).

19 2 BARRON & HOLTZOFF, FEDERAL PRACTICE AND PROCEDURE, § 511, at 91 (Wright ed. 1961); Reed, *Compulsory Joinder of Parties in Civil Actions*, 55 Mich. L. Rev. 327, 330 (1957).

20 2 BARRON & HOLTZOFF, FEDERAL PRACTICE AND PROCEDURE § 512, at 101 (Wright ed. 1961); cf. Petroleum Anchor Equip., Inc. v. Tyra, 406 S.W.2d 891, 894 (Tex. Sup. 1966).

21 WRIGHT, FEDERAL COURTS (1963), § 71, at 261. Parties classed as "necessary" or "conditionally necessary" under the Federal terminology are "insistable parties" in the terminology adopted in this state. Petroleum Anchor Equip., Inc. v. Tyra, 406 S.W.2d 891 (Tex. Sup. 1966).

> ability to protect that interest, or if a judgment in his absence would expose any of the existing parties to double obligation by reason of his claimed interest. If the absentee falls in this class and cannot be joined, the court would then decide whether to proceed in his absence by a frankly discretionary weighing of such factors as whether a satisfactory judgment could be rendered in his absence, to what extent a judgment would as a practical matter be prejudicial to him or to those already parties, what protective provisions in the decree might lessen or avoid such prejudice, and whether the plaintiff would have a satisfactory remedy if the action were dismissed for nonjoinder of the absentee. There is good reason to believe that this is what most courts already do in practice, and that the time-honored labels are applied only after such a determination has been made. . . .[22]

The author suggested that these factors should be textually incorporated into Federal Rule 19.[23] They were incorporated almost verbatim in the 1966 amendments and the term "joint interest" was eliminated from the text.[24]

It is not necessary to amend Texas Rule 39 before the courts may announce generally proper factors to be considered in determining parties' classifications in this state. Criticism has been leveled at the Federal Advisory Committee and its Reporter for undertaking textual changes in the Federal Rule.

Revised Rule 19 was not born of need. With deference we

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22 WRIGHT, FEDERAL COURTS (1963), at 263.

23 *Id.*

24 FED. R. CIV. P. 19(a) and (b) as amended 1966 which reads as follows:

(a) *Persons to be Joined if Feasible.* A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in this absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

(b) *Determination by Court Whenever Joinder Not Feasible.* If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

> believe that the objective could have been obtained, and perhaps better, if original Rule 19 had been left alone; the substance of the revision combined with much of the Committee's Note [appended to the revised rule]; and this overall product promulgated as the Committee's Note explaining what it conceived to be the proper function of original Rule 19. Sound commentary can greatly assist in the area of necessary [insistable] and indispensable parties where the substantive rights and interests and the interrelationship of various persons are complex; federal jurisdictional and related matters raise additional problems; and the need for some adjudication as against no adjudication must be weighed. In the end it comes down to good judging, and often in the setting of complex facts, interests, and rights.
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> Having embarked on revising Rule 19, we believe that the Committee produced a potentially good rule (albeit we think it has some shortcomings), for the Rule is rather general in nature, informative, and based upon factors and considerations drawn from the wealth of experience revealed in the decided cases. And if it is clearly borne in mind that the revised rule does not break with the judicial tradition concerning necessary and indispensable parties, that goes back to 1789, but is based upon that tradition and continues its general principles then much good may come of the revision.[25]

The factors which were suggested for interpreting and applying the earlier Federal rule, and which were textually adopted in the 1966 amendments, provide a useful method for the interpretation and application of Texas Rule 39. If, after considering the suggested and other relevant factors in a particular case, it is determined that joinder of an absentee is so fundamentally necessary to the orderly and expeditious administration of justice that a judgment in his absence cannot be appropriate, the trial or appellate court making that determination must declare the absentee an indispensable party and disallow any judgment on the merits to be rendered in his absence. A judgment disposing of the case without the absentees would be fundamentally erroneous.[26] It is now well settled that "when its jurisdiction is invoked by application for writ of error, the Supreme Court is authorized to and will consider fundamental error even though not assigned by the parties."[27]

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25 3A MOORE, FEDERAL PRACTICE, § 19.01-1[7], at 2125 (2d ed. 1968).
26 Petroleum Anchor Equip., Inc. v. Tyra, 406 S.W.2d 891 (Tex. Sup. 1966).
27 McCauley v. Consolidated Underwriters, 157 Tex. 475, 304 S.W.2d 265 (1957).

If, on the other hand, after considering the factors, the court determines that the choice of parties by the litigants is not overborne by the interests of potential but absent parties and by the social interest in the orderly and expeditious administration of justice, the absentee is assigned the status of at most an insistable party. While it is axiomatic that failure to join indispensable parties is fundamental error, failure to join an insistable party is reviewable on appeal only when there exists a proper appellate predicate.[28]

The severe consequences which may befall litigants who fail to join indispensable parties demand that such classification of parties be narrowly limited. It is conceivable that proceedings not involving property within the jurisdiction of the court could be completely stymied by an indispensable absentee who could not be brought into court involuntarily.[29] Seldom, of course, could this extreme event occur. "There is no person so intimately related to matter in litigation between others that there cannot be circumstances which will justify proceeding in his absence."[30] Before an action could be indefinitely abated it would be necessary to show that the trial court has no legal method to assert jurisdiction over the absentee; that in his absence complete relief cannot be given between those already parties; that the interest in the subject matter of the action claimed by him is such that the disposition of the action in his absence will as a practical matter impair his ability to protect that interest; and that the persons already parties would be left subject to inconsistent judgments because of his claimed interest. When these circumstances exist the court must further determine that in equity and good conscience the action could not proceed among the parties before it. The court will consider such factors as the extent to which a judgment rendered in his absence will be prejudicial to the absentee; the extent to which a subsequent suit by him could be prejudicial to those already parties; the extent to which that prejudice can be lessened or avoided by the shaping of relief in the judgment or by other measures; the extent to which a judgment in the absence will be otherwise adequate for those already parties; and whether those already parties will have an adequate remedy if the action is abated for nonjoinder of the absentee. Upon a balancing of all of these factors a court may conclude that a judgment

28 *Id.*

29 See note 36 *infra.*

30 Reed, *Compulsory Joinder of Parties in Civil Actions*, 55 Mich. L. Rev. 327, 538 (1957).

would be meaningless or that justice cannot be accomplished without the absentee. When that is the case, the absentee is indispensable, and the action must be abated until jurisdiction to bind him by the judgment is somehow attained.

This is not to say that the court lacks *jurisdiction* to enter a judgment on the subject matter which would be binding on those already parties to the action. Joinder of indispensable parties is not a question of jurisdiction; rather, it is a question primarily concerned with the orderly and expeditious administration of justice.[31] Although a widespread and common misconception has developed that failure to join indispensable parties affects the jurisdiction of the trial court, principles to that effect developed around federal diversity jurisdiction and are not elsewhere applicable.[32] "[T]here is no prescribed formula for determining in every case whether a person or corporation is an indispensable party or not."[33]

## TEXAS RULE 39

In *Snider* the lawyers *as deed of trust lienholders*, but not as parties to the disputed deeds, are indispensable parties. Phenix and Wilder, however, made themselves parties by their participation in and control of the litigation and would be bound by the judgment setting aside their grantors' title. No fundamental error was committed by the trial court in failing to make them parties by name. The title which they sought to defend was that of their clients, the Mason brothers, their deed of trust grantors; and one of the deeds they sought to protect was their own warranty deed to the brothers. Phenix testified at the trial seeking to establish that the deeds had been executed for consideration and without any intent to hinder, delay, or defraud the creditors of Mrs. Rickard. The interest of Phenix and Wilder was in community with that of the brothers, and their presence and the nature of their participation was sufficient to bind them as parties.[34]

Keeling did not appear in the suit and apparently he was no longer a partner of Phenix and Wilder at the time of the suit.[35] The

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[31] 2 BARRON & HOLTZOFF, FEDERAL PRACTICE AND PROCEDURE § 516, at 163 (Wright ed. 1961); 3A MOORE, *supra* note 25, § 19.05[2], at 2207, and § 19.19, at 2581; and authorities cited.

[32] Cf. Calcote v. Texas Pac. Coal & Oil Co., 157 F.2d 216, 218 (5th Cir. 1946), 167 A.L.R. 413 (1946).

[33] Niles-Bement-Pond Co. v. Iron Moulders' Union, 254 U.S. 77 (1920).

[34] Miller v. Dyess, 137 Tex. 135, 151 S.W.2d 186 (1941); Olive-Sternenberg Lumber Co. v. Gordon, 138 Tex. 459, 159 S.W.2d 845 (1942); 1 FREEMAN, JUDGMENTS § 434 (5th ed. 1925); 2 VAN FLEET, FORMER ADJUDICATION §§ 523, 524, 525, and 526 (1895).

[35] The firm name appearing on the papers and briefs filed in the case is "Phenix and Wilder"; and there is no indication in the record that Keeling participated in the litigation.

deeds and instruments in the case reflect that the lawyers acquired and conveyed their interests in the property jointly as individuals and not in the name of their partnership. Keeling was a joint owner of the deed of trust lien from the brothers to the lawyers, and his ability to protect that interest would be impaired as a practical matter by any judgment setting aside the title of his deed of trust grantors and his co-lienholders. Neither could complete relief be given between those already parties in his absence. Snider and the brothers could not be protected from inconsistent judgments should Keeling elect to sue to establish and foreclose his deed of trust lien at some future date. The consequences that a judgment rendered in his absence will as a practical matter be prejudicial to him and will decree only incomplete relief for the others could not be avoided or lessened by the shaping of relief between those already parties to the suit. Furthermore, Keeling could be made a party and his rights in the land could be adjudicated, although he may not be subject to personal service of process and may refuse to voluntarily appear in person before the court.[36] Those already parties would have had an adequate, albeit delayed, remedy if the suit had been abated by the trial court for nonjoinder of Keeling; even if abated by the appellate courts for fundamental error, they would have had the remedy of a new trial properly joining the deed of trust lienholders. The lienholders were "indispensable parties,"[37] and one of them, Keeling, was absent.

Mr. Rickard was not an indispensable party to the Snider suit. The disputed deeds purported to convey the separate property of Mrs. Rickard in which Mr. Rickard had no proprietary interest.[38] Article

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36 Pennoyer v. Neff, 95 U.S. 714 (1877). "It is in virtue of the States' jurisdiction over the property of the non-resident situated within its limits that its tribunals can inquire into that non-residents obligations to its own citizens, and the inquiry can then be carried only to the extent necessary to control the disposition of the property. If the non-residents have no property in the State, there is nothing upon which the tribunals can adjudicate." And see also TEX. REV. CIV. STAT. ANN. arts. 2031a and 2031b.

37 Cf. generally: Scott v. Graham, 156 Tex. 97, 292 S.W.2d 324 (1956); Veal v. Thomason, 138 Tex. 341, 159 S.W.2d 472 (1942); Shell Oil v. Howth, 138 Tex. 357, 159 S.W.2d 483 (1942); Sharpe v. Landowners Oil Association, 127 Tex. 147, 92 S.W.2d 434 (1936); Knioum v. Slattery, 239 S.W.2d 865 (Tex. Civ. App.—San Antonio 1951, writ ref'd); Rogers Nat'l Bank v. Pewitt, 231 S.W.2d 487 (Tex. Civ. App.—Texarkana 1950, writ ref'd); Belt v. Texas Co., 175 S.W.2d 622 (Tex. Civ. App.—Amarillo 1943, writ ref'd). Cf. as to lienholders: Copus v. Middleton, 2 Madd. 410, 56 Eng. Rep. 386 (1817); Perkins, Livingston & Post v. Brierfield Iron & Coal Co., 77 Ala. 403 (1884); R. W. Allen & Co. v. Sands, 216 Ala. 106, 112 So. 528 (1927); Warfield v. Marks, 190 F.2d 178 (5th Cir. 1951); Keene v. Hale-Halsell Co., 118 F.2d 332 (5th Cir. 1941); Roos v. Texas Co., 23 F.2d 171 (2d Cir. 1927); Gray v. Havemeyer, 53 F. 174 (8th Cir. 1892). See also: Dedman, *Indispensable Parties in Pooling Cases*, 9 Sw. L.J. 27 (1955); Frumer, *Multiple Parties and Claims in Texas*, 6 Sw. L.J. 135 (1952); Annot., 24 A.L.R.2d 395 (1952).

38 TEX. REV. CIV. STAT. ANN. art. 4613.

1299[39] was repealed and Articles 4614 and 4618[40] were amended by the Legislature, effective August 23, 1963, removing all requirements for formal joinder of the husband in his wife's conveyances of her separate lands except homesteads. Although he did join in executing the 1964 deed, his joinder in the execution was unnecessary except to convey the homestead tract, one of the eleven tracts, and that was exempt from the reach of creditors and was not affected by the suit; neither did Rickard have an heirship interest should the deeds be set aside for the benefit of Snider. The 1964 deed effectively conveyed to the lawyers any interest which Mrs. Rickard owned and purported to convey which was not subject to Snider's claim or not needed to satisfy it. The homestead tract, for example, was effectively conveyed by the deed regardless of Snider's claim.

> While title passes to the vendee [grantee] in a fraudulent conveyance, as against the debtor [grantor] and his estate, and such vendee [grantee] would receive any excess on the value of the property conveyed over the debts chargeable against same, nevertheless, as to defrauded creditors, the conveyance is void, and is denied any effect as prejudicing the lien of the creditor.[41]

Because Mr. Rickard would have no remaining interest in the land regardless of the outcome of the Snider suit, he was not an indispensable party.[42]

## CONCLUSION

Like many legal questions, parties problems require the courts to balance competing factors and considerations and to make preliminary fact findings on which to base ultimate rulings whether absentees are indispensable or even necessary to the disposition of particular suits. Such questions are law matters, but like so many other questions of construction and application, there is no clear division line and preliminary fact findings by the courts are required. The factors can be enumerated; the courts' analytical method simplified; and some predictability can be molded by careful lawyering.

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39 TEX. REV. CIV. STAT. ANN.

40 TEX. REV. CIV. STAT. ANN.

41 Douglas v. First Nat'l Bank of El Dorado, 120 Tex. 631, 40 S.W.2d 801, 802 (1931). See also: TEX. REV. CIV. STAT. ANN. art. 3997; Texas Sand Co. v. Shield, 381 S.W.2d 48 (Tex. Sup. 1964); John Hancock Mutual Life Ins. Co. v. Morse, 132 Tex. 534, 124 S.W.2d 330 (1939); and Ransom v. Ransom, 252 S.W.2d 212 (Tex. Civ. App.—Ft. Worth 1952, writ ref'd).

42 Fischer v. Rio Tire Co., 65 S.W.2d 751 (Tex. Comm'n App. 1940, holding approved). Cf. Petroleum Anchor Equip., Inc. v. Tyra, 406 S.W.2d 891 (Tex. Sup. 1966); and Petroleum Producers Co. v. Reed, 135 Tex. 386, 144 S.W.2d 540 (1940).