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Brown Vs. Swann

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Court : US Supreme Court

Decided On : 1835

Appeal No. : 34 U.S. 1

Appellant : Brown

Respondent : Swann

Judgement :

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Brown v. Swann

34 U.S. (9 Pet.) 1

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR

THE COUNTY OF ALEXANDRIA IN THE DISTRICT OF COLUMBIA

SYLLABUS

An appeal to the Supreme Court does not lie from a decree of the circuit court making an injunction perpetual and leaving some matters of account open for further consideration, upon which the parties went onto take further proof.

The decree perpetuating the injunction was not a final decree.

Mr. Lee, for the appellees, moved to dismiss the appeal, the same having been taken before a final decree in the case in the circuit court.

The appellees filed their bill in the circuit court on 21 November, 1825. An injunction was directed on the filing of the bill, which was afterwards in part dissolved. Subsequently

the injunction was altogether dissolved, and further proceedings being had in the case, the court, on 3 December, 1832, made the following decree.

"And now here at this day, to-wit, at a court continued and held for the district and county aforesaid, 3 December, 1832, came the parties aforesaid by their solicitors and, this cause having been set for hearing and decree on the bills, answers, demurrer of defendant, exhibits and depositions, as heretofore stated in the proceedings herein, and now coming on to be heard, it is the opinion of the court that the law on the demurrers is for the complainant. It is therefore by the court adjudged and decreed that the demurrer be overruled. It is further the opinion of the court that the complainant has fully sustained the charge of usury made by her in her bill against the defendant in relation to the loan therein stated, for a part of which loan the judgment at law heretofore enjoined by the order of this Court in this cause was obtained, and that under the provisions of the third section of the statute to amend the act entitled an act against usury, the defendant is entitled to receive no more than the principal sum by her lent, and is liable to the payment of the costs of this suit. And it appearing to the court as well from the admissions of the defendant as from the proof made by the complainant that of the sum of $2,300 loaned by the defendant under the said usurious contract, the complainant and her intestate have paid the sum of $1,350.30, leaving of the principal money loaned the sum of $949.70 unpaid, and the court not being satisfied as to the payment of the further sum of $50, for which the complainant claims credit, it is thereupon by the court adjudged and decreed that the injunction heretofore

awarded the complainant be perpetual, except as to the said sum of $949.70, of which sum the defendant is at liberty to proceed under her judgment for the sum of $890.70, and on the complainant's motion, for reasons appearing to the court, this cause is continued for further consideration as to the said sum of $50, part of the credit claimed by the complainant."

"From which decree the defendant prays an appeal to the Supreme Court of the United States, which is granted on her giving bond and security to be approved by one of the judges of this Court. "

The parties after this decree and appeal went on to take depositions under the authority of the circuit court, which were filed in that court, and, on 18 May, 1833, the circuit court made the following decree:

"And afterwards, to-wit, at an United States Circuit Court of the District of Columbia, continued and held for the county aforesaid, 18 May, 1833, the depositions of Richard B. Alexander and Alexander Moore taken under a commission issued in this case, having been returned and filed, and this cause now coming on for final hearing as to the credit claimed by the complainant for the sum of $50, her right to which was reserved for consideration by the terms of the decree heretofore pronounced, and it being the opinion of the court that the complainant is, under the proof offered, entitled to the said credit, it is now here by the court decreed that the injunction heretofore awarded the complainant be perpetual except as to the sum of $899.70, as to which the defendant is at liberty to proceed on her judgment at law, and it is further decreed that the defendant do pay to the complainant her costs in this suit, to be taxed by the clerk."

MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court dismissing the appeal with costs because the appeal was granted before there was a final decree in the case.

On appeal from the Circuit Court of the United States for the District of Columbia, holden in and for the County of Alexandria. On consideration of the motion made

in this cause yesterday by Mr. Edmund J. Lee of counsel for the appellees to dismiss this cause because the appeal was granted before there was a final decree rendered in the court below, and of the arguments of counsel thereupon had as well for the appellant as for the appellees, it is now here ordered, adjudged, and decreed by this Court that this appeal be and the same is hereby

Dismissed with costs.

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