Brockett Vs. Brockett

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Court : US Supreme Court

Decided On : 1844

Appeal No. : 43 U.S. 238

Appellant : Brockett

Respondent : Brockett

Judgement :

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Brockett v. Brockett

43 U.S. (2 How.) 238

APPEAL FROM THE CHANCERY SIDE OF THE CIRCUIT COURT

OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

SYLLABUS

Where there are many parties in a case below, it is not necessary for them all to join in the appeal bond. It is sufficient if they all appeal and the bond be approved by the court.

No appeal lies from the refusal of the court below to open a former decree. But if the court entertains a petition to open a decree, the time limited for an appeal does not begin to run until the refusal to open it, the same term continuing.

Where an appeal is prayed in open court, no citation is necessary.

The case was not reached in regular order, but a motion was made, under the rule, to dismiss the appeal under the following state of facts.

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A final decree was pronounced in the court below on 10 May, 1843, from which an appeal was prayed. A petition to reopen the decree was filed during the term and referred to a master, who reported on 9 June following. Upon his report the court refused to open its former decree, and from this refusal, as well as from the original decree, an appeal was prayed in which all the parties joined. On 15 June, the bond was executed by three of the parties, not being all.

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MR. JUSTICE STORY delivered the opinion of the Court.

A motion has been made to dismiss this appeal upon several grounds. The first is that although all the defendants have appealed from the decree of the court below, yet a part of them only have signed the appeal bond. This objection is not maintainable. It is not necessary that all the defendants should join in the appeal bond, although all must join in the appeal. It is sufficient if the appeal bond is approved by the court as satisfactory and complete security, by whomsoever it may be executed.

The next ground is that an appeal has been taken from the refusal of the court below to open the former decree, rendered for the appellant. It is plain that no appeal lies to this Court in such a matter, as it rests merely in the sound discretion of the court below. And if this had been the sole appeal in the case, the appeal

must have been dismissed. But an appeal has also been taken to the first decree (which was a final decree) rendered by the court. That decree

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was rendered on 10 May, 1843. During the same term, a petition was filed by the defendants on the 26th day of the same month, to have the final decree opened for certain purposes, and the court took cognizance of the petition and referred it to a master commissioner. His report was made on 9 June following, the same term still continuing, and the court then refused to open the final decree, and from this refusal as well as from the final decree the defendants took an appeal and gave bond with sufficient sureties on the 15th day of the same month, and the appeal was then allowed by the court. Before that time, the court has not fixed the penalty of the bond.

Now the argument is that as the original final decree was rendered more than one month before the appeal, it could not operate under the laws of the United States as a supersedeas or to stay execution on the decree, because to have such an effect, the appeal should be made and the bond should be given within ten days after the final decree. But the short and conclusive answer to this objection is that the final decree of 10 May was suspended by the subsequent action of the court, and it did not take effect until 9 June, and that the appeal was duly taken and the appeal bond given within ten days from this last period.

Another and the last ground of exception is to the want of proper parties to the writ of error and citation. No writ of error lies in this case, but an appeal only, and the appeal having been made in open court, no citation was necessary.

Upon the whole, we are of opinion that the motion to dismiss the appeal ought to be overruled, and it is accordingly overruled.