Silsby Vs. Foote

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Court : US Supreme Court

Decided On : 1857

Appeal No. : 61 U.S. 290

Appellant : Silsby

Respondent : Foote

Judgement :

Silsby v. Foote - 61 U.S. 290 (1857)
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Silsby v. Foote

61 U.S. (20 How.) 290

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE NORTHERN DISTRICT OF NEW YORK

SYLLABUS

Where an appeal from a decree is taken within ten days from the rendition of the decree, it is in time to operate as a supersedeas, and so also if taken within ten days after the decree is settled and signed.

There were two cases upon the docket, with precisely the same caption, one numbered 54 and the other 106.

The case in question was the one numbered 106, which it was moved to dismiss for the following reasons:

"And the said appellee comes into court at the December term thereof, 1857, and moves the said Court to dismiss the appeal in this cause, docketed as No. 106 at the said term upon the ground that there had been previously taken by the said appellants an appeal from the same portions of the decree made below which are appealed from in this cause, and which prior appeal is still pending and undetermined in this Court, and such motion will be made upon the records filed in this cause, and in cause No. 54 on the docket for December term, 1857."

"R. H. GILLET"

"December 18, 1857 *Of Counsel for Appellee* "

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MR. JUSTICE NELSON delivered the opinion of the Court.

This is a motion to dismiss an appeal docketed as No. 106 on the ground that a previous appeal, docketed No. 54,

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had been taken by the same parties, and from the same portions of the decree below. The final decision had been made by the court, between the parties, on the coming in of the master's report on the 28th August, 1854, and an appeal duly taken on the 4th September following. The decree was special in its terms, and was not settled or signed by the judge till the 11th December, 1856, on which day the second appeal was taken. As the appellant desired to appeal within the ten days, so as to stay execution, the second appeal was taken for abundant caution, as there might be a doubt from which period the ten days should be counted --

namely the time of the final decision of the court or of the signing and filing of the special decree in form.

By the twenty-second section of the Judiciary Act, modified by the second section of the Act of March 3, 1803, an appeal from a final decree must be taken within five years after the *rendering* or *passing* of the judgment or decree complained of. And by the twenty-third section, as modified above, the appeal is a supersedeas, and stays execution in cases only where it is taken and a copy lodged for the adverse party within ten days, Sundays exclusive, after *rendering* the judgment or *passing* the decree complained of. The *time* to be taken as when the judgment or decree may be said to be rendered or passed may admit of some latitude, and may depend somewhat upon the usage and practice of the particular court. In the case of a simple judgment or decree, such as an affirmance or reversal and the like, there would seem to be no difficulty in taking the appeal at any time within the ten days after the decision on the case was pronounced. But where the decree is special and its terms to be settled, there is a propriety in waiting for its settlement before taking the appeal. Whether taken or not may sometimes depend upon the decree as settled. In the second circuit, with the practice of which I am the most familiar, it is supposed by many of the profession that the proper time for taking the appeal in such a case is after the settlement of the decree. As this Court, however, has always held that if an appeal is taken in court at the time of rendering the decision or during the term, no citation is necessary, and as appeals are perhaps more frequently taken within the ten days after the decision is pronounced and entered on the minutes by the clerk, it may be admitted that when thus taken, it is regular, and stays execution in the court below. And we are also of opinion that if taken within ten days after the decree is settled and signed by the judge and filed with the clerk, that it is in time to stay the proceedings. The recognition of the two periods from which the ten days may be counted

becomes necessary on account of the difference in the modes of proceeding and practice in the different circuits. This question cannot arise in England, as the time

for appeal runs two years from the enrollment of the decree. 3 Dan.Pr. 131. The time of enrollment cannot well be adopted by this Court, as on many of the circuits it is understood, according to the practice, no enrollment of the decree takes place.

As, upon our view of the case presented on the motion, the first appeal was regular, the one taken and standing on the docket No. 106 should be

Dismissed.