Cleveland Vs. Chamberlain

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Court : US Supreme Court

Decided On : 1861

Appeal No. : 66 U.S. 419

Appellant : Cleveland

Respondent : Chamberlain

Judgement :

Cleveland v. Chamberlain - 66 U.S. 419 (1861)
U.S. Supreme Court Cleveland v. Chamberlain, 66 U.S. 1 Black 419 419 (1861)

Cleveland v. Chamberlain

66 U.S. (1 Black) 419

APPEAL FROM THE DISTRICT COURT OF THE

UNITED STATES FOR THE DISTRICT OF WISCONSIN

SYLLABUS

1. If it be made to appear in the case of an appeal pending in this Court that the appellant has purchased and taken an assignment of all the appellee's interest in the decree appealed from, the appeal will be dismissed.

2. The rule laid down in *Lord v. Veazie,* 8 How. 254, where both parties colluded to get up a case for the opinion of the Court, is applicable to a case where the appellant becomes sole party in interest and *dominos litis* on both sides.

3. An appellant who becomes the equitable owner of the whole opposing interest, who procures a discontinuance as to his co-defendants, against whom no final decree is made, employs counsel on both sides, and makes up a record to suit himself in order that he may obtain an opinion of this Court affecting the rights and interests of persons not parties to the pretended controversy is justly chargeable with conduct highly reprehensible and a punishable contempt of court.

4. The third parties, whose rights and interests may be affected by the decision of the court in a dispute alleged to be merely colorable, will be heard on affidavits or other proofs to show that it is not carried on in good faith between the parties who are nominally the appellant and appellee.

Newcombe Cleveland, of Illinois, brought his bill in equity in the district court against the La Crosse & Milwaukee Railroad Company, Byron Kilbourn, Moses Kneeland, James Luddington, D.C. Freeman, Charles D. Nash, of Wisconsin, and Selah Chamberlain, of Ohio, complaining that he had recovered a judgment against the railroad company for $112,271 76, besides costs, which remains unsatisfied, and on which the complainant issued his execution and levied upon

Page 66 U. S. 420

the road of the company and all its property, real and personal, and upon its franchises, rights and privileges, as by the laws of Wisconsin he had a right to do; that the railroad company fraudulently, and with intent to cheat its creditors, made to Selah Chamberlain a pretended lease of its railroad, except the Watertown division, for an indefinite time, and a sale of all its personal property except what was used on the Watertown Division, together with all its rights, privileges and franchises connected with or incident thereto; that Chamberlain entered into possession of the road and took into his custody the property of the company conveyed to him by this fraudulent contract; that with a like fraudulent intent, the

company made a similar lease and contract of sale for the Watertown Division of their road, but this lease was for a certain limited time, and the personal property used thereon, with D. C. Freeman, who, under the contract, went into possession thereof; that while the complainant's action, in which he recovered the judgment already mentioned, was on trial, the railroad company fraudulently confessed judgment to Chamberlain for $629,105.22, though the company did not at that time owe him a sum exceeding fifty thousand dollars, and all of the judgment beyond that sum was without any consideration whatever. The bill charges Kilbourn, Kneeland, and Luddington, who were directors of the company, with fraudulently acquiring title to certain lands of the company worth $100,000 by means of a pretended sale made by themselves to another person, who was their agent for $20,000 in stock of the company. The bill prays that the contracts with Freeman and Chamberlain, and the conveyances to the other defendants of the lands, as well as the judgment confessed by the company to Chamberlain, may be declared fraudulent and void.

The material charges of the bill were denied in the several answers of the defendants. Much evidence was taken on both sides, and the case was most fully heard and examined by the judge of the district court, who decreed that the contract and judgment of Chamberlain were fraudulent, and as such should be set aside. The contract with Freeman having expired by its own limitation, no decree with respect to him was

Page 66 U. S. 421

made except that he pay a certain part of the costs. Against the other defendants the court made no final decree, but as to the conveyance of the lands to Kneeland and Luddington, referred it to a master to ascertain the annual income of the lands they purchased, the value of the improvements made since their purchase, and the interest upon the purchase money paid. The suit against them was afterwards discontinued. The La Crosse & Milwaukee Railroad Company, pending the suit, had been dissolved, and their charter and property were transferred to another corporation, organized under the name of the Milwaukee & Minnesota Railroad Company. The only party, therefore, against whom a final decree was made was

Chamberlain, whose judgment and contract were set aside as fraudulent. Chamberlain took an appeal to this Court.

Page 66 U. S. 425

MR. JUSTICE GRIER.

This appeal must be dismissed. Selah Chamberlain is in fact both appellant and appellee. By the intervention of a friend, he has purchased the debt demanded by Cleveland in his bill, and now carries on a pretended controversy by counsel, chosen and paid by himself, and on a record selected by them, for the evident purpose of obtaining a decision injurious to the rights and interests of third parties.

There is no material difference between this case and that of *Lord v. Veazie,* 8 How. 254, when the whole proceeding was justly rebuked by the Court as "in contempt of the Court and highly reprehensible." That case originated in a collusion between the parties. In this case the appellee, who was a judgment creditor of the La Crosse & Milwaukee railroad, filed his bill to set aside a fraudulent conveyance of the debtors' property made to the appellant, and other fraudulent conveyances of their lands made to certain directors of the company, who were also made parties respondent. The case was prosecuted with vigor by the complainant till a decree was obtained, on the 11th of February, 1859, setting aside the various assignments, and the case "committed to a master to ascertain and report the annual income of the several lots described in the bill," &c.; This was not a final decree. Nevertheless, an appeal was permitted to be entered by Chamberlain on 12th of February, 1859. But the record was not brought up to this Court for a year and a half, nor so long as there were parties litigant who had adverse interests. About a month after the decree was entered, Chamberlain became the equitable owner of Cleveland's judgment and the *"dominus litis"* on both sides.

Page 66 U. S. 426

He then agreed to pay counsel who appeared for Cleveland, the appellee, but, for anything that appears, without the knowledge of the counsel, who, in July, 1860, entered a discontinuance as to the parties, against whom a decree had not been entered.

It is plain that this is no adversary proceeding, no controversy between the appellant and the nominal appellee. It differs from the case just cited in this alone -- that there both parties colluded to get up an agreed case for the opinion of this Court; here, Chamberlain becomes the sole party in interest on both sides, makes up a record, and has a case made to suit himself, in order that he may obtain an opinion of this Court affecting the rights and interest of persons not parties to the pretended controversy.

We repeat, therefore, what was said by the Court in that case:

"Any attempt by a mere colorable dispute to obtain the opinion of the Court upon a question of law which a party desires to know for his own interest or his own purposes, when there is no real and substantial controversy between those who appear as adverse parties to the suit, is an abuse which courts of justice have always reprehended and treated as a punishable contempt of court."

It is but proper to say that the counsel who have been employed in the case are entirely acquitted of any participation in the purposes of the party.

This case came on to be argued on the transcript of the record from the Circuit Court of the United States for the District of Wisconsin, and it appearing to the Court here, from affidavits and other evidence filed in this case in behalf of persons not parties to this suit, that this appeal is not conducted by parties having adverse interests, but for the purpose of obtaining a decision of this Court to affect the interests of persons not parties -- it is therefore now here

Ordered and adjudged by this Court that the appeal in this case be and the same is hereby dismissed with costs.