Thomson Vs. Dean

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Court : US Supreme Court

Decided On : 1868

Appeal No. : 74 U.S. 342

Appellant : Thomson

Respondent : Dean

Judgement :

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Thomson v. Dean

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MOTION TO DISMISS AN APPEAL FROM

THE CIRCUIT COURT FOR WEST TENNESSEE

SYLLABUS

1. The rule laid down in *Forgay v. Conrad,* 6 How. 204, as to what constitutes a final decree for the purpose of an appeal recognized as the true rule on the subject.

2. Hence, where a bill related to the ownership and transfer of certain stock, a decree was held to be final when it decided the right to the property in contest, directed it to be delivered by the defendant to the complainant by transfer, and entitled the complainant to have the decree carried immediately into execution, leaving only to be adjusted accounts between the parties in pursuance of the decree settling the question of ownership.

This was a motion to dismiss an appeal from the circuit court for West Tennessee, on the ground that the decree from which it was taken was not final.

The record showed that the controversy related to the ownership and transfer of two hundred and four shares of the stock of the Memphis Gaslight Company, and to the rights of the parties under contracts relating to the purchase, sale, and transfer of the stock.

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The decree directed that Dean, the defendant below and appellant here, transfer forthwith upon the books of the company one hundred and ninety-four shares of the stock to one of the plaintiffs below, who are appellees here, and ten shares to another. It directed further that account be taken and stated as to the amount paid and to be paid for the stock and as to dividends accrued, and to be credited under the contracts between the parties. This decree was rendered on the 12th of March, 1868, and appeal was allowed on the same day. Bond was given on the 23d.

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THE CHIEF JUSTICE delivered the opinion of the Court.

The question is whether the decree in this case was final for the purpose of appeal.

The eighth rule of the Court, prescribing the practice of the United States courts in equity, directs that

"If the decree be for the performance of any specific act, it shall prescribe the time within which the act shall be done, of which the defendant is bound to take notice,"

and that

"on affidavit by the plaintiff of nonperformance within the prescribed time, the clerk shall issue a writ of attachment against the delinquent party, from which he shall not be discharged

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unless on full compliance, or by special order enlarging the time."

In this case, the decree directs the performance of a specific act and requires that it be done forthwith. The effect of the act when done is to invest the transferees with all the rights of ownership. It changes the property in the stock as absolutely and as completely as could be done by execution on a decree for sale. It looks to no future modification or change of the decree. No such change or modification was possible after the term, except on rehearing or by bill of review in the circuit court or through appeal in this Court.

So far as the court below was concerned, the decree in the case determined the principal matter in controversy between the parties. And since the decree could not be changed except through a new and distinct proceeding, it determined that matter finally.

Why, then, must it not be regarded as a final decree within the meaning of the acts of Congress providing for appeals?

The eighth rule of practice to which we have referred certainly regards such a decree as that now under consideration as final in respect to the act to be performed.

But it is insisted that this Court has held that no decree which does not completely dispose of the whole cause is final, and that this decree, though disposing completely of the controversy as to the ownership of the stock, is not final because

it directs certain accounts to be taken.

It is true that this Court has always desired that appeals be taken only from decrees which are not only final but complete, and has, upon one occasion, at least, directed the attention of the circuit courts to the expediency and importance of refraining from making final decrees on any part of a cause, however important, until prepared to dispose of it completely. Such a course would undoubtedly save much inconvenience both to the circuit courts and this Court and diminish largely the expense of litigation to suitors.

And it may be true that under the influence of these considerations, the degree of finality essential to the right of appeal

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has been sometimes pushed quite to the limit of construction. But we think that the current of decisions fully sustains the rule laid down by the late Chief Justice in the case of *Forgay v. Conrad,* and which we again declare in his own language:

"When the decree decides the right to the property in contest and directs it to be delivered up by the defendant to the complainant or directs it to be sold, or directs the defendant to pay a certain sum of money to the complainant, and the complainant is entitled to have such decree carried immediately into execution, the decree must be regarded as a final one to that extent, and authorizes an appeal to this Court, although so much of the bill is retained in the circuit court as is necessary for the purpose of adjusting by further decree the accounts between the parties pursuant to the decree passed."

The reasoning in the case just cited fully vindicates this rule, in our judgment, as a sound construction of the acts of Congress relating to appeals, and is sustained by the authority of several decisions. *

And it is quite clear that the appeal under consideration is within this rule. The decree for which it was taken decided the right to the property in contest, directed it to be delivered by defendant to complainant by transfer, entitled the complainant

to have the decree carried immediately into execution, leaving only to be adjusted accounts between the parties in pursuance of the decree settling the question of ownership.

It follows that the motion to dismiss must be

Denied.

* *Ray v. Law,* 3 Cranch 179; *Whiting v. Bank United States,* 13 Pet. 6; *Michoud v. Girod,* 4 How. 505. *See also* *Orchard v. Hughes,* 1 Wall. 657; *Milwaukee & Minnesota Railroad Co. v. Soutter,* 2 Wall. 440; *Withenbury v. United States,* 5 Wall. 821.