

Rubber Company Vs. Goodyear

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Court : US Supreme Court

Decided On : 1869

Appeal No. : 76 U.S. 807

Appellant : Rubber Company

Respondent : Goodyear

Judgement :

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Rubber Company v. Goodyear

76 U.S. (9 Wall.) 807

APPEAL FROM THE CIRCUIT COURT

FOR THE DISTRICT OF RHODE ISLAND

SYLLABUS

1. Where, on a bill by several persons for the infringement of a patent and for an account (the defenses being invalidity of the patent and a license), the court

sustains the patent and decrees damages, a bill cannot be regarded as a cross-bill which sets up a judgment in another suit against one of the complainants and asks that the conjoined defendants in the principal suit set forth and discover what share of the damages they claim respectively, so that the defendant in that suit may set off his judgment as respects the one against whom it is.

2. As an original bill, it cannot be sustained if it have either been filed before the decree for damages was rendered in the principal suit or have been a judgment in attachment only, and where there was no service on the person of the defendant.

3. A bill which is in no wise auxiliary to an original suit nor in continuation of that proceeding does not present a case proper for substituted service.

After the interlocutory decree was entered in the case of *Charles Goodyear, executor of Charles Goodyear, deceased*,

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and others, against The Providence Rubber Company and others, in the Circuit Court of the United States for the District of Rhode Island, and while the case was before the master to whom it had been referred, the complainants filed this bill. It alleges that they hold a judgment against the estate of Charles Goodyear, deceased, in favor of E. M. Chaffee & Co. for the sum of \$48,215.20, amounting, with interest thereon, to \$72,215.20 or thereabout, which they insist ought in equity and good conscience to be offset against such portion of the damages to be recovered in the suit first mentioned as may be due and payable to Charles Goodyear, the executor. An exhibit is annexed to the bill and made a part of it by which it appears that the judgment was recovered against Charles Goodyear, deceased, in his lifetime by attachment; that process was not served upon him; that he did not appear; that he made no defense; that the cause of action was the alleged breach of a contract, and that the court assessed the damages for which the judgment was rendered.

It further appears by this exhibit that the firm of E. M. Chaffee & Co. consisted of Edwin M. Chaffee, George O'Bourne, and William W. Brown. The sheriff's return

upon the writ of attachment is as follows:

"For want of the body of the within-named defendant to be by me found in my precinct, I have this day, at eleven o'clock, A.M., made service of this writ by attaching two pieces grass cloth, one piece red fitting, six rolls cotton batting, one piece of perforated rubber cloth, one roll grass cloth, one roll sheeting, covered with cotton batting, two bundles wadding, one piece bagging, set forth to me by the plaintiffs as the property of the defendant, and have left a true and attested copy of this writ, with my doings hereon, with Messrs. Bourne & Brown, in whose hands or possession I found said goods and chattels, the defendants having no last and usual place of abode within my precinct whereat to leave a copy."

The bill further sets forth that the Union India Rubber Company claims to be a corporation of the State of New

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York, having its principal place of business in the City of New York, and that the Phenix Rubber Company claims to be a corporation of the State of Connecticut having its principal place of business also in the City of New York.

The prayer of the bill is that the defendants set forth and discover what share of the damages to be recovered in the prior suit they respectively claim; that the judgment may be set off against that portion which shall belong to Charles Goodyear, as executor of Charles Goodyear, deceased, and for other and proper relief. There is a further prayer that service of process may be made upon the corporation defendants by serving it upon their solicitor of record, and that service may be made upon Charles Goodyear, the executor, by some disinterested person in the State of New York. Substituted service was made upon the corporations accordingly, pursuant to an order of the court. Charles Goodyear entered his appearance and demurred. The corporations appeared specially and moved to dismiss the bill. The demurrer and the motion were both sustained, and the bill was dismissed. The complainants thereupon appealed to this Court.

In the argument here, the counsel for the appellants have endeavored to support the bill upon the ground that it is a cross-bill, having for its object to enforce an offset arising under such circumstances as give a court of equity jurisdiction of the case and authority to give the relief for which the bill specifically prays. A cross-bill is brought to obtain a discovery in aid of a defense to the original suit or to obtain complete relief to all the parties as to the matters charged in the original bill. It should not introduce any distinct matter. It is auxiliary to the original suit and a graft and dependency upon it. If its purpose be different from this, it is not a cross-bill, though it may have a connection with the same general subject. [[Footnote 1](#)] Here, the original suit was for the infringement of a patent. The defenses were

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invalidity of the patent and a license. Neither the case made by the bill nor the defenses set up in the answer had the slightest relation to the judgment in question. It is entirely foreign to the grounds of the controversy. Its only connection with the parties was that it belonged to the defendants and was against the testator of one of the complainants. Any discovery in relation to it could not give or help any defense to the original suit. It was simply a fact affecting personally a portion of the parties, but no more affecting the litigation than would any other controversy between them as to lands, stocks, or other property. We therefore hold the bill to be an original, and not a cross-bill.

Can it be sustained as such? When it was filed, no decree had passed in the original suit for the payment of damages. *Non constat* that such a decree would ever be made. It was possible that the court might annul the interlocutory order, decree for the defendants, and dismiss the bill. The bill before us was therefore prematurely filed. The judgment which it seeks to enforce was recovered in a proceeding by attachment. It did not affect the defendant personally, and bound no property but that upon which the grasp of the court was fixed by the service of the writ of attachment. Beyond that it was ineffectual for any purpose. An execution could not be issued upon it to reach other property, and it would not be *prima facie* evidence against the defendant in another suit upon the same cause of action. To enforce the contract against the testator while living or his executor after

his decease, it was necessary to sue, procure personal service, and make the same proofs as if the judgment in attachment had not been rendered. Such a judgment has no more efficacy and can no more be enforced in equity than at law. The demurrer of the executor was well taken and properly sustained. [[Footnote 2](#)]

The motion to dismiss was made by the foreign corporations. The bill, being in no wise auxiliary to the original suit

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nor in continuation of that proceeding, the case was not one proper for substituted service. [[Footnote 3](#)] They were not bound to appear. They entered their appearance specially and appeared only to object to the jurisdiction of the court.

The learned judge who heard the case below was correct in ordering the bill to be dismissed.

Decree affirmed.

[[Footnote 1](#)]

Mitford's Pleading 80, 81; [Ayres v. Carver](#), 17 How. 591; [Cross v. De Valle](#), 1 Wall. 5.

[[Footnote 2](#)]

[D'Arcy v. Ketchum](#), 11 How. 165; *McVicker v. Beeby*, 31 Me. 314; Story's Conflict of Laws 314.

[[Footnote 3](#)]

[Dunn v. Clarke](#), 8 Pet. 1.