

Ex Parte Cockcroft

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Court : US Supreme Court

Decided On : 1881

Appeal No. : 104 U.S. 578

Appellant : Ex Parte Cockcroft

Judgement :

Ex Parte Cockcroft - 104 U.S. 578 (1881)

U.S. Supreme Court Ex Parte Cockcroft, 104 U.S. 578 (1881)

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104 U.S. 578

PETITION FOR A WRIT OF MANDAMUS

SYLLABUS

A person cannot appeal from a decree rendered in a suit whereto he was not a party.

The facts are stated in the opinion of the Court.

Mr. CHIEF JUSTICE WAITE delivered the opinion of the Court.

This is a petition for a writ of mandamus requiring the Circuit Court of the United States for the District of South Carolina to allow an appeal by the petitioner from an order of the court entered on the 7th of October, 1881, confirming a sale of a railroad made pursuant to a decree filed on the 25th of September, 1880, in the suit of *Calvin, Claflin, and Others v. The South Carolina Railroad Company and Others*. The petitioner was not a party to the suit, neither does it appear that he ever asked to be made a party. He is not the holder of any of the bonds that by the decree under which the sale was made are entitled to a distributive share of the proceeds. Unless the property should bring at another sale enough to satisfy the mortgages and leave the balance for distribution among the general creditors of the company, he can get no advantage from setting aside the sale which has already been made. In his showing to the circuit court, he certainly did not make it appear that he had any real interest in the controversy. He was evidently heard as a matter of favor, and not because he had any right to intervene. Before confirming the sale the court seemed desirous of ascertaining whether, under all the circumstances, in the exercise of its judicial discretion such an order ought to be made. For this purpose, it was willing to consider the affidavits produced by the petitioner. This seems to have been done out of abundant caution, not because it was necessary in law.

Inasmuch, therefore, as the petitioner was not made a party

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to the suit, either by an express order of the court to that effect, or by being treated as such, his application for an appeal was properly denied. This case cannot be distinguished in principle from *Ex parte Cutting*, [94 U. S. 14](#) .

Motion denied.