

**Marsh Vs. Shepard**

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**Court :** US Supreme Court

**Decided On :** Mar-14-1887

**Appeal No. :** 120 U.S. 595

**Appellant :** Marsh

**Respondent :** Shepard

**Judgement :**

Marsh v. Shepard - 120 U.S. 595 (1887)

U.S. Supreme Court Marsh v. Shepard, 120 U.S. 595 (1887)

**Marsh v. Shepard**

**Submitted March 7, 1887**

**Decided March 14, 1887**

**120 U.S. 595**

*APPEAL FROM THE CIRCUIT COURT OF THE UNITED*

*STATES FOR THE EASTERN DISTRICT OF MICHIGAN*

**SYLLABUS**

If the other appellants oppose a motion, made by one of several appellants, to dismiss an appeal on the ground that since it was taken, the supreme court of a state has enjoined all the appellants from enforcing the claims which form the subject matter of the appeal, it will be denied.

This was a motion to dismiss an appeal from a decree of the circuit court dismissing a bill in equity brought to procure a perpetual injunction against alleged infringements of letters patent. The motion was made by James Scott, one of the appellants. The following affidavit and appearance were filed in support of the motion.

"State of Michigan, *Calhoun County*, ss."

"James Scott, being first duly sworn, doth on oath depose and say: I am one of the appellants named in the above entitled cause; that said appeal was taken without my knowledge and consent, and that I gave no authority to R. A.

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Parker, Esq., of Detroit, Michigan, to enter my appearance in this cause in this court, but that I have authorized and directed Mr. Edward J. Hill, of Chicago, Illinois, one of the attorneys of this court, to appear for me and move to dismiss this appeal"

"JAMES SCOTT"

"Subscribed and sworn to before me this 10th day of February, A.D. 1887."

"[SEAL] FRANK W. DUNNING"

" *Notary Public* "

"I hereby enter my appearance in the above entitled cause pursuant to the above authority and direction as the attorney for James Scott for the purpose only of making a motion to dismiss this appeal because the cause of action or grounds of relief have been taken away by the decree of the Circuit Court of Calhoun County,

Michigan, as shown in and by the documents, copies of which are to be found in the annexed transcript of record."

"Dated February 28, A.D. 1887."

"EDWARD J. HILL"

The documents referred to in the entry of appearance contain the transcript of the record in a suit in chancery between the same parties with reference to alleged infringements of the same letters patent, decided in the Supreme Court of Michigan after this appeal was taken, in which suit a perpetual injunction was granted as prayed for, and also a copy of a writ of error in the same cause to this court sued out on the petition of Marsh and Le Fever only, in the petition for which the following grounds were set out:

"1. That it appears therein that the exclusive jurisdiction of the Supreme Court of the United States, on the appeal by these defendants over the same question and the same parties was drawn in question and was denied."

"2. That full faith and credit, at the request of these defendants, was not given to the proceedings, record, and appeal appearing in the Circuit Court of the United States for

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the Eastern District of Michigan concerning the same issues and between the same parties."

"3. That the right and authority under the Constitution and laws of the United States of the said defendants to prosecute their said appeal from the said circuit court of the United States was drawn in question and denied."

"4. That the right and authority under the Constitution and laws of the United States authorizing the issue of letters patent to inventors, and especially the right and authority exercised by said defendants under letters patent no 236-052 issued in pursuance of said laws, was drawn in question and denied."

The motion to dismiss was opposed by Marsh and Le Fever, the other appellants.

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

This motion is denied. The sole ground of the application is that since the appeal, the Supreme Court of Michigan has, in a suit between the same parties, enjoined these appellants from making any claim against the appellee for the use of the patented invention which is the subject matter of the suit, and has required them to release all the claims and demands which they have been prosecuting. Marsh and Le Fever oppose this motion, and Scott has no right to dismiss for them.

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