

Sipperley Vs. Smith

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SooperKanoon Citation : sooperkanoon.com/87489

Court : US Supreme Court

Decided On : Oct-29-1894

Appeal No. : 155 U.S. 86

Appellant : Sipperley

Respondent : Smith

Judgement :

Sipperley v. Smith - 155 U.S. 86 (1894)

U.S. Supreme Court Sipperley v. Smith, 155 U.S. 86 (1894)

Sipperley v. Smith

No. 888

Submitted October 15, 1894

Decided October 29, 1894

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*APPEAL FROM THE SUPREME COURT
OF THE TERRITORY OF UTAH*

SYLLABUS

The rule reiterated that where a judgment or decree is joint, all the parties against whom it is rendered must join in the writ of error or appeal, unless there be summons and severance or the equivalent.

Motion to dismiss or affirm. The court stated the case as follows:

A. F. Sipperley and H. S. Lee, composing a partnership under the firm name of A. F. Sipperley & Co., doing business in the City of Salt Lake, Utah, made an assignment of their partnership

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property to one Ross, in trust to convert the same into money, and pay creditors in the order named -- First, M. J. Gray and the Union Bank of Greeley, Colorado, in full; second, Mrs. A. F. Sipperley, Mrs. E. J. Walling, and H. A. Lee, certain individual indebtedness, in full; third, their remaining creditors. John O. Smith, George Whiting, Charles F. Connor, and George S. Smith, composing the firm of Smith, Connor & Co., brought suit against A. F. Sipperley and H. S. Lee in the District Court for the third Judicial District of Utah territory, and levied an attachment on the assigned property, upon the ground that Sipperley & Co. had disposed thereof with intent to defraud their creditors. Thereupon the preferred creditors, M. J. Gray, the Union Bank of Greeley, Colorado, Mrs. Sipperley, Mrs. Walling, and H. A. Lee, filed an intervening complaint in said suit, praying for a receiver, and that the assignment be declared valid, and the indebtedness due them be ordered to be paid out of the proceeds of the property, and for general relief, which intervening complaint was answered by the original plaintiffs, who prayed therein that the assignment be adjudged fraudulent and void. The cause was tried by the District Court of the Third Judicial District, a jury having been duly waived. The trial judge filed findings of fact and conclusions of law and rendered judgment adjudging the assignment fraudulent and void, dismissing the complaint of intervention, and directing the receiver (the assignee having in the meantime been appointed receiver) to pay plaintiffs in certain other suits consolidated with

this and then these plaintiffs.

The title of the cause in the district court under which the findings of fact and conclusions of law appeared in the record, and also the judgment was as follows:

"John O. Smith *et al.*, Plaintiffs v. A. F. Sipperley *et al.*, Defendants, and M. J. Gray, Mrs. A. F. Sipperley, Mrs. E. J. Walling, H. A. Lee, and the Union Bank of Greeley, Colorado, Interveners."

The record did not contain the prayer for and allowance of appeal to the Supreme Court of Utah, but showed as at the June term, 1893, of that court, the following order:

"John O. Smith *et al.* v. A. F. Sipperley *et al.*, Defts., and M. J. Gray

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et al., Interveners & Appellants. This cause, coming on regularly to be heard, was argued by Hon. John W. Judd in behalf of appellants, by Charles C. Dey, Esq., in reply, was submitted, and taken under advisement."

The judgment of the district court was thereafter affirmed. The opinion of the supreme court is given, and is entitled "John O. Smith *et al.*, Respondents v. A. F. Sipperley *et al.*, Appellants." Subsequently this order was entered:

"John O. Smith *et al.* v. A. F. Sipperley, Defts., and M. J. Gray *et al.*, Interveners & Appellants. In this cause, counsel for appellants prays the allowance of an appeal from the judgment of this Court rendered therein to the Supreme Court of the United States, and asks that the amount of a bond to be given thereon be now fixed, and it was ordered that such appeal as prayed for be, and is hereby, allowed, and the amount of a bond to be given thereon is fixed in the sum of five thousand dollars, and the amount of a bond for costs is fixed in the sum of five hundred (500) dollars."

The record disclosed a bond dated December 22, 1893, entitled "John O. Smith *et al.*, Respondents v. A. F. Sipperley *et al.*, Defendants, and M. J. Gray *et al.*,

Interveners, Appellants," signed by Mrs. Sipperley, Mrs. Walling, H. A. Lee, and the Union Bank of Greeley, Colorado, as principals, running to John O. Smith, George Whiting, Charles P. Connor, and George S. Smith, composing the firm of Smith, Whiting, Connor & Co., in the penal sum of \$5,500, and reciting that

"Whereas the above-named Mistress A. F. Sipperley, Mistress E. J. Walling, H. A. Lee, and the Union Bank of Greeley, Colorado, have prosecuted an appeal to the Supreme Court of the United States,"

etc. This bond was approved by the Chief Justice of Utah, and filed on the day of its date. Citation was issued, dated January 4, 1894, and directed to John O. Smith, George Whiting, Charles P. Connor, George S. Smith, and their attorneys, reciting that Mrs. Sipperley, Mrs. Walling, H. A. Lee, and the Union Bank of Greeley, Colorado, had appealed, etc., service of which citation was admitted January 2, 1894. An assignment of errors in this Court was also filed in that court January 12th, entitled

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"John O. Smith *et al.* v. A. F. Sipperley *et al.*, and Mrs. A. F. Sipperley, Mrs. E. J. Walling, H. A. Lee, and the Union Bank of Greeley, Colorado, Interveners & Appellants."

No application for summons and severance as to M. J. Gray, or any equivalent therefor, appeared in the record, nor any order permitting severance, nor was any application made in this Court for the issue of citation to A. F. Sipperley and H. S. Lee, or leave to perfect the appeal as to them; nor did they or Gray appear herein.

MR. CHIEF JUSTICE FULLER.

The motion to dismiss is sustained, upon the authority of [*Masterson v. Herndon*](#), 10 Wall. 416; *Hardee v. Wilson*, [146 U. S. 179](#) ; *Inglehart v. Stansbury*, [151 U. S. 68](#) , and *Davis v. Mercantile Trust Co.*, [152 U. S. 590](#) .

Appeal dismissed.

