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Ex Parte in the Matter of Skinner and Eddy Corp.

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Decided On : May-12-1924

Appeal No. : 265 U.S. 86

Appellant : Ex Parte in the Matter of Skinner and Eddy Corp.

Judgement :

Ex Parte in the Matter of Skinner & Eddy Corp. - 265 U.S. 86 (1924)
U.S. Supreme Court Ex Parte in the Matter of Skinner & Eddy Corp., 265 U.S. 86 (1924)

Ex Parte in the Matter of Skinner & Eddy Corporation

No. 28, Original

Argued, on return to rule to show cause, April 14, 1924

Decided May 12, 1924

265 U.S. 86

PETITION FOR A WRIT OF MANDAMUS OR PROHIBITION

TO THE COURT OF CLAIMS

1. The right of a plaintiff to dismiss a suit, if it exists, is absolute, independent of the reasons offered, and not affected by concealment or misstatement of reasons. P. 265 U. S. 93 .

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2. The rule of the federal courts at law and in equity governing the right of a plaintiff to dismiss without prejudice should obtain in the Court of Claims. Pp. 265 U. S. 92 , 265 U. S. 94 .

3. A plaintiff in the Court of Claim may dismiss without prejudice when the government has filed no counterclaim, and will not be prejudiced, legally, by the dismissal. *Id.*

4. Where a plaintiff, after dismissing its suit in the Court of Clams, began a suit in a state court against the Shipping Board on the same causes of action, which remained pending, *held* that the subject matter was withdrawn from the cognizance of the Court of Claims by Jud.Code 154, and that it could not resume its jurisdiction by setting aside the dismissal retroactively. P. 265 U. S. 95 .

5. An order of the Court of Claim attempting to reinstate a dismissed case in plain violation of the plaintiff's right to dismiss it, and an effect of which would be to deprive the plaintiff of the right of trial by jury in a state court, may be corrected by mandamus. P. 265 U. S. 96 .

Writ absolute.

Rule on the Court of Claims directing it to show cause why it should not be required by mandamus or by prohibition to restore an order dismissing a suit, to set aside another vacating the first, and to abstain from attempting exercise of further jurisdiction in the case.

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

This is a petition for a writ of mandamus directed to the Court of Claims to restore its order of April 30, 1923, dismissing the suit of the Skinner & Eddy Corporation against the United States, and to set aside its order of November 28, 1923, vacating the order of dismissal and to prohibit the court from attempting to exercise further jurisdiction in the case. The judges of the Court of Claims have made a response to a rule to show cause.

On June 15, 1921, the petitioner brought this suit against the United States in the Court of Claims for $17,493,488.97. The cause of action was based on balances alleged to be due for the construction of certain ships, for bonuses for advanced deliveries of others, and for extra labor, extra work and repairs on other vessels, all for the United States. The principal part of the claim grew out of the cancellation of two contracts between the petitioner and the United States Emergency Fleet Corporation "representing the United States." The largest item of the claim was for anticipated profits on 25 vessels. On August 15, 1921, no plea, answer, or notice of any counterclaim having been filed by the government, a general traverse was entered by the clerk of the court under its Rule No. 34. No further pleadings were filed and no proceedings were had of any kind until April 11, 1923, when petitioner filed its motion to dismiss the suit without prejudice. The petitioner based the motion on the ground that it had begun its suit under the Act of June 15, 1917, c. 29, 40 Stat. 182, 183, as amended by 2, par. c, of the Merchant Marine Act of June 5, 1920 , c. 250, 41 Stat. 989; that, as interpreted by this Court, these acts required the claims to be first presented to the President

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for him to determine the just compensation, prior to the filing of a suit, and that, as this claim was not presented to the President, the Court of Claims had no jurisdiction. On April 12th, the government moved to withdraw its general traverse and for leave to file its answer and cross-bill. The motions were argued, and on April 30, 1923, the court made an order granting the petitioner's motion and dismissed its petition.

On May 1, 1923, one day after the dismissal, the petitioner filed a suit against the United States Shipping Board Emergency Fleet Corporation in the state court of Washington at Seattle, on substantially the same causes of action as those sued for in the Court of Claims, but omitting certain phases of damages claimed, for $9,129,401.14.

On June 9, 1923 at the same term of the court, the government moved for a reargument of petitioner's motion to dismiss without prejudice, and to allow the government to file a counterclaim. The motion was inadvertently overruled October 22, 1923, but, upon restoration and reargument, the order of dismissal was vacated and leave was given to the government to file its counterclaim.

It is intimated on behalf of the government that the reason given by the petitioner for his motion to dismiss in April, 1923, was not a genuine one. The petitioner offers that and others. Others are that, under the decision of this Court in *Sloan Shipyard Corp. v. United States Shipping Board Fleet Corporation,* 258 U. S. 549, and *United States Shipping Board v. Sullivan,* 261 U. S. 146, it was doubtful whether, under the contracts sued on, a recovery could be had against the government in the Court of Claims; and, second, that it was doubtful whether, under *Russell Motor Co. v. United States,* 261 U. S. 514, there could be any recovery for anticipated profits under the cancelled contracts, which was the basis for nearly half of the claim.

We think this mandamus must be granted. At common law, a plaintiff has an absolute right to discontinue or dismiss

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his suit at any stage of the proceedings prior to verdict or judgment, and this right has been declared to be substantial. *Barrett v. Virginian Railway Co.,* 250 U. S. 473; *Confiscation Cases,* 7 Wall. 454, 74 U. S. 457; *Veazie v. Wadleigh,* 11 Pet. 55; *United States v. Norfolk & Western Ry. Co.,* 118 F. 554.

It is ordinarily the undisputed right of a plaintiff to dismiss a bill in equity before final hearing. *McGowan v. Columbia, etc., Association,* 245 U. S. 352, 245 U.

S. 358 . In *Pullman's Car Co. v. Transportation Co.,* 171 U. S. 138 , 171 U. S. 146 , this statement of the rule in *City of Detroit v. Detroit City Railway Co.,* 55 F. 569, was approved:

"It is very clear from an examination of the authorities, English and American, that the right of a complainant to dismiss his bill without prejudice, on payment of costs, was, of course, except in certain cases. *Chicago & A. R. Co. v. Union Rolling-Mill Co.,* 109 U. S. 702 . The exception was where a dismissal of the bill would prejudice the defendants in some other way than by the mere prospect of being harassed and vexed by future litigation of the same kind."

Cowham v. McNider, 261 F. 714; *Thomson-Houston Electric Co. v. Holland,* 160 F. 768; *Morton Trust Co. v. Keith,* 150 F. 606; *Pennsylvania Globe Gaslight Co. v. Globe Gaslight Co.,* 121 F. 1015; *Youtsey v. Hoffman,* 108 F. 699; *McCabe v. Southern Railway Co.,* 107 F. 213.

The right to dismiss, if it exists, is absolute. It does not depend on the reasons which the plaintiff offers for his action. The fact that he may not have disclosed all his reasons, or may not have given the real one, cannot affect his right.

The usual ground for denying a complainant in equity the right to dismiss his bill without prejudice at his own costs is that the cause has proceeded so far that the defendant is in a position to demand on the pleadings an

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opportunity to seek affirmative relief, and he would be prejudiced by being remitted to a separate action. Having been put to the trouble of getting his counter-case properly pleaded and ready, he may insist that the cause proceed to a decree.

We do not perceive in the circumstances of this case any such ground for making an exception to the general rule as was shown in *Western Union Tel. Co. v. American Bell Tel. Co.,* 50 F. 662, 664, or in *City of Detroit v. Detroit City Railway Co.,* 55 F. 569, or *Manufacturing Co. v. Waring,* 46 F. 87, or *Electrical Co. v. Brush Co.,* 44 F. 602, or in *Bank v. Rose,* 1 Rich.Eq. (S.C.) 294, or *Booth v.*

Leycester, 1 Keen 247.

Under 145 of the Judicial Code, the Court of Claims is given jurisdiction to hear and determine all counterclaims on the part of the government "against any claimant against the government in said court." Under rule 34 of that court, notice of such counterclaim must be filed within 60 days after the service of the petition on the Attorney General. In this case, no such counterclaim was filed, and a general traverse was noted by the clerk. Eighteen months elapsed and nothing was done when the petitioner moved to dismiss without prejudice, and then the government, without proffering any actual counterclaim, asked for leave to file one, objecting to dismissal. The cause was dismissed, but 6 months later it was restored and a counterclaim filed.

The government had not, when the case was dismissed, given any time or expense to the preparation and filing of a cross-bill or of the evidence to sustain it. It had not taken any action in respect to the cause which entitled it so say that it would be prejudiced by a dismissal within the meaning of the authorities. It suddenly was awakened by the motion to dismiss to the fact that, by 18 months' delay, it was losing a possible opportunity to litigate a cross-claim in the Court of Claims and without a

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jury. We think the same rule should obtain in the procedure of the Court of Claims an in federal courts of law and equity in respect to the dismissal of cases without prejudice.

But there is a special reason why the rule must be enforced in this case. By 154 of the Judicial Code, it is provided that:

"No person shall file or prosecute in the Court of Claims, or in the Supreme Court on appeal therefrom, any claim for or in respect to which he or any assignee of his has pending in any other court any suit or process against any person who at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, mediately or immediately, under the

authority of the United States."

The day after the dismissal of this suit in the Court of Claims, April 30, 1923, the petitioner filed suit in a state court of Washington for something more than $9,000,000 for the same causes of action as those sued for in the Court of Claims, except the claims for anticipated profits. That suit and the section of the Code just quoted necessarily prevent the petitioner from suing on those claims in the Court of Claims, and exclude its jurisdiction of them, because the Fleet Corporation which is sued in the Washington court was certainly acting or professing to act, mediately or immediately, under the authority of the United States. The jurisdiction of these claims by the Court of Claims, having been parted with by the order of dismissal in April, cannot be resumed by a retroactive order of the subsequent November, in view of the restrictive provisions of 154, which, by reason of the Washington suit, intervene and apply. *Corona Coal Co. v. United States,* 263 U. S. 537 .

It only remains to inquire whether this is a proper case for the writ asked. Mandamus is an extraordinary remedial process, which is awarded, not as a matter of

right, but in the exercise of a sound judicial discretion. Although classed as a legal remedy, in issuing it, a court must be largely controlled by equitable principles. *Duncan Townsite Co. v. Lane,* 245 U. S. 308 , 245 U. S. 312 ; *Arant v. Lane,* 249 U. S. 367 , 249 U. S. 371 . It would be a useless waste of time and effort to enforce a trial in the Court of Claims if we were, upon appeal, to find that the petitioner was unjustly deprived of his substantial right to dismiss his petition, as we should have to do for the reasons stated. Added to this is the consideration which has been regarded as furnishing a substantial ground for the extraordinary process of the writ that the petitioner by a denial of his right to dismiss in the Court of Claims will be deprived of a right of trial by jury in the state court of Washington. *Ex parte Peterson,* 253 U. S. 300 , 253 U. S. 305 ; *Ex parte Simons,* 247 U. S. 231 , 247 U. S. 239 .

Writ absolute.

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