

SMELTING COMPANY v. KEMP.

Under the circumstances of this case, the court declines to accept the submission of the cause against the wishes of those who, being collaterally interested in the decision which may be made, united in the employment of counsel to present their defence, and contributed to a common fund for the payment of the expenses of the litigation.

ERROR to the Circuit Court of the United States for the District of Colorado.

Motion to set aside submission.

Mr. Robert H. Bradford and Mr. Willis Drummond in support of the motion.

Mr. Alexander T. Britton and Mr. Walter H. Smith, contra.

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

The showing made on this motion satisfies us that this case, and the one which follows it on the docket, were brought here for a determination of the questions on which depends the title of the St. Louis Smelting and Refining Company to its addition to Leadville; that the decision of these suits will dispose of a large number of others now pending in the court below; that when the suits were begun below all the defendants united in the employment of counsel to present their defence, and contributed to a common fund for the payment of the expenses of the litigation; that since these cases have been docketed here the parties to this have come to an amicable understanding in respect to the subject-matter of their particular litigation, under which this submission has been made, through new counsel employed in behalf of the defendants in error and without the concurrence of those interested in the other case and the suits still pending below. The questions involved are important. Under these circumstances we think we ought not to accept the submission of the cause against the wishes of those collaterally interested in the decision that may be made.

The submission will, therefore, be set aside, and the cause restored to its place on the docket; and it is

So ordered.