

Opinion of the Court.

EAST TENNESSEE, VIRGINIA AND GEORGIA
RAILROAD COMPANY v. SOUTHERN TELE-
GRAPH COMPANY.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA.

No. 107. Submitted December 13, 1887. — Argued March 20, 1888. — Decided April 9, 1888.

It being made to appear that one party to this suit had sold out to the other, and that the suit was prosecuted by the purchasing party for his own benefit, the court of its own motion, after notice and hearing, dismissed the case.

Mr. Gaylord B. Clark for plaintiff in error submitted on his brief.

No appearance by counsel for defendant in error. *Mr. W. A. Gunter* was attorney of record for it.

MR. CHIEF JUSTICE WAITE on the 9th of January, 1888, announced the following order :

It having been suggested to us that there is no longer any real controversy between the parties to this suit about the matters therein originally involved, and that The Western Union Telegraph Company is at this time practically both plaintiff and defendant, it is ordered that this writ of error be dismissed unless the plaintiff in error show cause to the contrary on or before the 17th day of February. The Clerk will serve a copy of this order at once on the counsel of record for the plaintiff in error through the mail.

Due service of this order was made, and on the 20th of February, 1888

THE CHIEF JUSTICE made the following announcement :

The showing in this case against the order to dismiss does not satisfy us that there exists any longer a real controversy in the suit. It is conceded that the Western Union Telegraph

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Company is now occupying the line under a contract with the railroad company, which gives it an exclusive right in that behalf, and it is not denied that some arrangement has been made with the Southern Telegraph Company by which that company no longer is a contestant in the cause. Time is given the railroad company until the 19th day of March next to make a further showing in the premises if it desires to do so.

MR. JUSTICE MILLER, on the 9th of April, 1888, delivered the opinion of the court.

It was suggested by a letter from counsel employed on one side of this suit that his party had sold out the interest which it had to the other party, who was prosecuting it now and was *dominus litis* on both sides. A ruling was made some time ago, before the death of the late Chief Justice, in effect that there was sufficient evidence to that effect to require the case to be dismissed unless the side now prosecuting it for decision would show satisfactory evidence that it was a *bona fide* suit. Two attempts have been made, and we are agreed in the opinion that they are both failures and that the original order should now be carried out, dismissing the case on the grounds set forth in the opinion of the Chief Justice, delivered at the time.

IN RE ROYALL.

ORIGINAL MOTION IN A CAUSE ADJUDGED AT THE LAST TERM OF
THIS COURT.

No. 1351 of October Term, 1886. Submitted February 17, 1888. — Decided February 20, 1888.

The court denies a motion to take action to cause the judgment of a state court to be reversed in obedience to the mandate of this court, on the ground that it did not appear that the petitioner had applied to the highest court of the State to carry the mandate of this court into effect.

Mr. Leigh Robinson, on behalf of Mr. William L. Royall, the plaintiff in *Royall v. Virginia*, decided at the last term and reported in 121 U. S. at page 102, presented the following petition.