

Gardner v. Goodyear Dental Vulcanite Co.

GARDNER v. GOODYEAR DENTAL VULCANITE COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND.

No. 133. December Term, 1871. — Decided March 3, 1873.

One party to a suit cannot pay the fees of counsel on both sides, both in the court below and on appeal, without being held to have such control over both the preparation and argument of the cause, as to make the suit merely collusive in both courts.

MOTION TO DISMISS. The case is stated in the opinion.

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

The original suit in equity was brought by the Goodyear Dental Vulcanite Company against Gardner, to enjoin him from the use of certain patented subjects, belonging, as alleged, to the company, and for an account. The case was heard upon a bill, answer and testimony, and there was a decree in favor of the company in the Circuit Court for the District of Rhode Island in September, 1870. Upon appeal to this court, the decree below was affirmed on the 6th of May, 1872, but the opinion has not been read.

The defence was conducted by counsel originally employed and paid by Newbrough, under whom Gardner was licensee. On the 1st of July, 1869, before the decree in the Circuit Court, Newbrough and the company compromised all matters of difference between them, with the understanding that this suit should go on to the final hearing and determination, both in the Circuit Court and in this court, on appeal, as if the compromise had not been made.

The company, however, paid the counsel employed for the defence as well as for themselves in the Circuit Court, and subsequently in this court.

These facts appear from the record and from the admissions of the company, in the 9th Article of their answer to the motion to dismiss the appeal. They are the only facts which we think it necessary to notice.

It may be that the company has not become the legal or equitable owners of the opposing interests involved in the suit. There may be, and doubtless are, large opposing interests, of which they are neither the legal nor equitable owners. But it cannot be admitted that one party to a suit can pay the fees of counsel on both sides,

Cases Omitted in the Reports.

both in the court below and on appeal, without being held to have such control over both the preparation and argument of the cause, as to make the suit merely collusive in both courts. It can make no difference that the counsel fees were charged to the party apparently, though not really, liable to pay them, and payment from the other party procured through him. This, indeed, is a circumstance against the party who pays the fees, rather than in his favor.

The motion to vacate the decree of affirmance, heretofore made, and to dismiss the appeal must, therefore, be granted, and an order made to recall the mandate which has been issued to the Circuit Court. We take occasion, however, to say, that we see nothing in the conduct of the counsel who actually represented the company which merits blame, or which ought to affect in any degree the high esteem in which they have been held. Neither of them appears to have had any knowledge of any arrangements made by their client with the opposing party.

Motion granted.

Mr. J. S. Black for the motion. *Mr. Causten Browne* submitted an explanatory statement to the court.

WELCH *v.* BARNARD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

No. 141. December Term, 1871. — Decided April 22, 1872.

The decree below rightfully denied to the parties their claim for rents and profits, and it is affirmed.

THE case is stated in the opinion.

MR. JUSTICE FIELD delivered the opinion of the court.

In 1837 one Thomas Barnard, a citizen of the State of Mississippi, filed a bill in the Circuit Court of the United States for the Eastern District of Arkansas, against Chester Ashley, Silas Craig and others, to obtain a decree for the cancellation of certain patents issued to them, and to quiet his title to certain real property in Arkansas, of which he claimed to be the owner and occupant.

In 1853, by a decree of the court rendered in that suit and in a cross-suit commenced by the defendants, the title to the property was adjudged to be in Silas Craig, and the heirs and executrix of Chester Ashley, he having died pending the suits; and the complainants were decreed to surrender possession of the premises, or