

Case No. 4,266.

ECKERT V. BAUERT ET AL.

[4 Wash. C. C. 370.]¹

Circuit Court, E. D. Pennsylvania.

April Term, 1823.

SUBPOENA IN EQUITY—SERVICE ON ATTORNEY FOR FOREIGN DEFENDANT.

The court will not order service of a subpoena in equity on the defendants' attorney at law to be a good service, except in cross suits, and injunctions to stay proceedings at law, on the ground of the defendants' residing out of the state.

[Cited in *Ward v. Seabry*, Case No. 17,161; *Segee v. Thomas*, Id. 12,633; *Gregory v. Pike*, 29 Fed. 590.]

The plaintiff having filed a bill on the equity side of the court, to carry into effect the award and agreement stated in the case between the same parties, Ewing, for the plaintiff, moved for an order that service of the subpoena upon the attorney of the defendants at law should be considered as good service, the defendants being all foreigners, and residing beyond sea. This was opposed by Ingraham, the attorney at law.

WASHINGTON, Circuit Justice. This court has never, to my recollection, made this order, except in injunction cases, to stay proceedings on a judgment at law, and in cross suits, where the plaintiff at law in the first, and the plaintiff in equity in the second case, resides beyond the jurisdiction of the court. In the case of *Hitner v. Suckley* [Case No. 6,543], decided in this court at the April term 1810, a motion was made that the service of a subpoena upon an injunction bill to stay waste, upon the attorney of the defendant, in an action of law depending in this court against the plaintiff in equity, for slandering his title to the land, which formed the subject of the bill, should be considered as good service. The court then laid down the general rule as to injunction cases to stay proceedings on a judgment of law; but denied the motion in that case; being of opinion that the attorney of the defendant at law, could not be considered as representing him in equity, and that the subjects in controversy in the two suits were totally unconnected. I understand the practice of this court to conform to that of the English court of chancery. Motion overruled.

¹ [Originally published from the MSS. of Hon. Bushrod Washington, Associate Justice of the Supreme Court of the United States, under the supervision of Richard Peters, Jr., Esq.]