

SPERRY ET AL. V. ERIE RY. CO.

[6 Blatchf. 423.]¹

Circuit Court, S. D. New York. May 31, 1869.

CHAMPERTY—HOW PLEADED—MOTION TO TAKE FROM FILES.

An objection that a bill in equity was filed under an agreement made between the plaintiffs and certain other parties, which is void for champerty, ought to be raised formally, by answer, and not by a motion to take the bill from the files.

[This was a bill in equity by Elihu Sperry and Anna Sperry against the Erie Railway Company.] Motion by the defendants to take the bill of complaint in this suit from the files of the court, and to set aside the service of the subpoena therein, on the ground that the bill and the subpoena were an abuse of the process of the court, and a fraud thereon, and that the suit partook of the nature of maintenance.

William W. McFarland, for plaintiffs.

Clarence A. Seward, for defendants.

BLATCHFORD, District Judge. The ground of this motion is, that the bill was filed under an agreement made between the plaintiffs and certain other parties, which is void for champerty. I do not think this is the proper mode of taking the objection. It ought to be raised formally, by answer, so that plenary proofs may be taken in regard to such an issue, and the right of review in regard to it be secured to both parties. If the motion were to be granted, the plaintiffs would be without remedy. The motion is denied.

¹ [Reported by Hon. Samuel Blatchford, District Judge, and here reprinted by permission.]

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