

abridgment of the rights of parties in respect to the jurisdiction of this court, nor to the act of a party calculated, through the use of such rule or practice, to compass a result which should impair the rights of his opponent in equity proceedings herein. *Hyde v. Stone*, 20 How. 170.

The facts alleged in the defendants' plea, and disclosed by the record, furnished no legal bar to this proceeding. Moreover the plea is not founded in equity. It should therefore be adjudged insufficient, and the defendants required to answer, and it is ordered accordingly.

HEDGES v. SEIBERT CYLINDER OIL CUP CO.

(Circuit Court of Appeals, Third Circuit. April 4, 1892.)

APPEAL—JOINT JUDGMENT OR DECREE.

Where a judgment or decree is against several persons jointly, one of them cannot appeal alone, without a proper summons and severance.

Appeal from the Circuit Court of the United States for the District of New Jersey.

In Equity. Suit by the Seibert Cylinder Oil Cup Company against the Newark Lubricator Manufacturing Company, Charles Couse, president, and William H. Hedges, secretary and treasurer, thereof, for infringement of letters patent No. 138,243, for an invention relating to lubricators used in steam engines. There was judgment for plaintiff, (35 Fed. Rep. 509,) and defendant Hedges alone appeals. Motion to dismiss appeal. Appeal dismissed.

Laurence E. Sexton, for the motion.

J. C. Clayton, opposed.

Before ACHESON, Circuit Judge, and BUTLER, District Judge.

ACHESON, Circuit Judge. Undoubtedly the final decree in the court below in this case is a joint decree against the three defendants, the Newark Lubricator Manufacturing Company, Charles Couse, and William H. Hedges. These parties were jointly interested in the suit, and the decree affects them all jointly. Yet only one of them, William H. Hedges, has appealed from the decree. His appeal was taken without previous summons and severance, or any equivalent action, and no cause has been shown for the nonjoinder of his codefendants in the appeal. Now, it has been held repeatedly by the supreme court, and is the settled rule in that court, that all the parties against whom a joint judgment or decree is rendered must unite in the writ of error or appeal, or it will be dismissed, unless there has been a summons and severance, or some like proceeding, or sufficient cause is shown for the nonjoinder. *Masterson v. Herndon*, 10 Wall. 416; *Feibelman v. Packard*, 108 U. S. 15, 1 Sup. Ct. Rep. 138; *Estis v. Trabue*, 128 U. S. 225, 9 Sup. Ct. Rep. 58. These decisions are conclusive here, and the appeal of William H.

Hedges must be dismissed for want of the joinder therein of the other defendants.

Having reached this conclusion, we do not deem it necessary to consider the other reason urged in support of the motion to dismiss, namely, that the appeal was taken too late.

Appeal dismissed.

WALKER *et al.* v. ATMORE *et al.*

(Circuit Court of Appeals, Third Circuit. April 29, 1892.)

1. WILLS—CONSTRUCTION—VESTED AND CONTINGENT REMAINDERS.

Testator directed that his wife should receive the interest on \$5,000 during her life; afterwards such interest to be paid to her daughters, E. and A.; if they or either of them died within 10 years from the date of the will, his son "to have the use of the said \$5,000 by paying the interest to the children" of E. and A.; and, "after the death of both E. and A., (if they should die before the expiration of the above-mentioned ten years, at the expiration of the above-mentioned ten years, in case either or both the aforesaid E. or A. should have died,) the money shall be divided in two equal parts, and be divided between their children equally." The will then gave to the son all testator's real and personal property, after the debts and funeral expenses "and the above-mentioned \$5,000 are paid or secured." *Held*, that the parenthetical clause was merely intended to preserve to the son the ten years' "use" before given, in case E. and A. died before that time, and that on the death of the testator the *corpus* of the property vested in the children of E. and A., and was not contingent upon the death of E. and A. before the expiration of the 10 years.

2. SAME—LEGACY—CHARGE ON LANDS.

The devise to the son of all the real and personal property, after paying the debts and "the above-mentioned \$5,000," constituted the \$5,000 a charge on the real estate.

3. SAME—EXECUTOR'S BOND.

The statutory bond given by the son as executor was merely for the faithful discharge of his official duties, and was not a security for the payment of the \$5,000 legacy.

46 Fed. Rep. 429, affirmed.

Appeal from the Circuit Court of the United States for the District of Delaware.

In Equity. Bill by Jane Atmore, administratrix, and the heirs at law of Ann Jones, deceased, against John H. Walker, administrator *d. b. n. c. t. a.*, and the heirs at law and creditors, of Joseph Dean, for a construction of the will of the said Joseph Dean. Decree below was in favor of complainants. See 46 Fed. Rep. 429. Defendants appeal. Affirmed.

Edward G. Bradford and *Benj. Nields*, for appellants.

H. Gordon McCouch, for appellees.

Before ACHESON, Circuit Judge, and DALLAS and BUTLER, District Judges.

BUTLER, District Judge. Joseph Dean on the 6th of January, 1860, made a will which contains the following provisions:

"*Secondly*. I do direct that my beloved wife Jane Dean shall receive the interest of five thousand dollars during her lifetime in lieu of her dower at common law if she shall so elect, one hundred dollars on account of the first