SCOTT v. HAMNER. WAPLES-PLATTER CO. et al. v. TURNER. MILLER v. CHOCTAW, O. & G. RY. CO. LONG-BELL LUMBER CO. v. THOMAS et al.

(Circuit Court of Appeals, Eighth Circuit. February 3, 1896.)

Nos. 622, 643, 654, 693.

CIRCUIT COURT OF APPEALS—JURISDICTION—UNITED STATES COURT IN THE INDIAN TERRITORY.

The act of March 1, 1895 (28 Stat. 695, c. 145), creating a court of appeals for the Indian Territory, deprived the circuit court of appeals for the Eighth circuit of the power to entertain writs of error and appeals from the United States court in the Indian Territory, and writs of error to said circuit court of appeals allowed by the United States court in the Indian Territory after March 1, 1895, must be dismissed.

In Error to the United States Court in the Indian Territory.

William T. Hutchings (Richard B. Shepard and Harrison O. Shepard were with him on the brief), for plaintiff in error John S. Scott.

A. G. Moseley (S. S. Fears was with him on the brief), for plaintiffs in error Waples-Platter Company, C. H. Low, and J. S. Hancock.

N. B. Maxey (S. S. Fears was with him on the brief), for plaintiff in error John T. Miller.

W. R. Cowley filed brief for plaintiff in error Long-Bell Lumber Co.

N. B. Maxey (G. B. Denison was with him on the brief), for defendant in error James B. Hamner.

William T. Hutchings, for defendant in error Clarence W. Turner.

J. W. McLoud, for defendant in error Choctaw, O. & G. Ry. Co.

E. J. Fannin filed brief for defendants in error J. J. Thomas and D. J. Thomas.

Before CALDWELL, SANBORN, and THAYER, Circuit Judges.

THAYER, Circuit Judge. In these cases writs of error were not allowed by the United States court in the Indian Territory until after March 1, 1895, when an act entitled "An act to provide for the appointment of additional judges of the United States court in the Indian Territory and for other purposes" (28 Stat. 695, c. 145) took effect. The necessary operation of section 11 of that act was to deprive this court, from and after March 1, 1895, of the power to entertain writs of error and appeals to review judgments and decrees of the United States court in the Indian Territory, which power was originally conferred on this court by section 13 of the act establishing circuit courts of appeals. 26 Stat. 826, c. 517. Section 11 of the act of March 1, 1895, vested the court of appeals of the Indian Territory with appellate jurisdiction over the United States courts in the Indian Territory, in the following language:

"Said court shall have such jurisdiction and powers in said Indian Territory and such general superintending control over the courts thereof as is conferred upon the supreme court of Arkansas over the courts thereof by the laws of said state, as provided by chapter 40 of Mansfield's Digest of the Laws of Arkansas, and the provisions of said chapter, so far as they relate to the jurisdiction and powers of said supreme court of Arkansas as to appeals and writs of error, and as to the trial and decision of causes, so far as they are applicable,

shall be, and are hereby, extended over and put in force in the Indian Territory; * * *. Writs of error and appeals from the final decision of said appellate court shall be allowed and may be taken to the circuit court of appeals for the Eighth judicial circuit in the same manner and under the same regulations as appeals are taken from the circuit courts of the United States."

The provision found in the act of March 1, 1895, last quoted, necessarily deprives this court of the appellate jurisdiction heretofore exercised over the United States court in the Indian Territory by virtue of section 13 of the act of March 3, 1891; and as the writs of error in the above-entitled cases were allowed after the act of March 1, 1895, had taken effect, it follows that they were improperly sued out, and that this court has no power to entertain the same. Railroad Co. v. Grant, 98 U. S. 398, and cases there cited; Cincinnati Safe & Lock Co. v. Grand Rapids Safety-Deposit Co., 146 U. S. 54, 13 Sup. Ct. 13. The several writs of error are therefore dismissed.

ANDREWS et al. v. THUM et al.

(Circuit Court of Appeals, First Circuit. February 15, 1896.)

No. 89.

1. APPEAL—FINAL DECREE—MOTION FOR REHEARING.
   A final decree is suspended by a motion for rehearing, and does not take effect and become operative for the purposes of an appeal until such motion is overruled.
2. SAME.
   Where, after the entry of a final decree, a motion was made for a rehearing and to reopen the case, which was denied after a hearing, *held*, that an appeal subsequently taken was from the final decree itself, and not from the order denying the said motion.
3. SAME—FORM OF MANDATE.
   It is not necessary to recite in the mandate every step in the various stages of the cause.

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

This was a suit by Otto Thum and others against John A. Andrews and others for infringement of patents No. 278,294 and 305,118, issued to said Otto Thum for an improvement in fly paper. The alleged infringement consisted in the sale by defendants of fly paper manufactured by Benjamin F. B. Willson, carrying on business under the name of Willson & Co. Upon complainants' threatening suit against defendants for such infringement, John W. F. Willson and said Benjamin F. B. Willson had entered into an agreement with defendants, that in case any suit should be brought against defendants for infringement of any patent, by the use or sale of such fly paper, the said Willsons would assume the defense of such suit, and carry on the same to final judgment at their own sole expense; and that in case the plaintiffs, in any such suit, should obtain a judgment or decree, said Willsons would pay all sums that defendants should be adjudged to pay as damages, profits, or costs of suit. In accordance with this agreement, the Willsons assumed and carried on the defense of this suit. On February 7, 1893, the circuit entered an interlocutory decree, sustaining the patents, finding infringement, awarding a perpetual injunction, and referring the cause to a master, to take an account of profits and damages. 53 Fed. 84. On May 6, 1893, the Willsons filed a motion for defendants to reopen the case, for the purpose of introducing a prior patent to a third party, alleged to be