MERRILL v. NATIONAL BANK OF JACKSONVILLE.

(Circuit Court of Appeals, Fifth Circuit. December 8, 1896.)

No. 542.

APPEAL—DISMISSAL—DECREE UNDER MANDATE.

An appeal, taken to the circuit court of appeals from a decree of the circuit court entered in accordance with the mandate of the former court upon a previous appeal, will be dismissed, even though an appeal lie to the supreme court from the decision of the circuit court of appeals.

Appeal from the Circuit Court of the United States for the Southern District of Florida.

Duncan U. Fletcher, for appellant.
John C. Cooper, for appellee.

Before PARDEE and McCORMICK, Circuit Judges, and MAXEY, District Judge.

PARDEE, Circuit Judge. This case was before this court at the last term, and was then heard and determined upon its merits. 21 C. C. A. 282, 75 Fed. 148. In the decree then rendered we reversed the former decree of the circuit court, and remanded the cause, with instructions to enter a decree in accordance with the views expressed in the opinion of the court, in which opinion the decree to be entered was specifically outlined and determined. On entering the mandate in the circuit court a decree in exact accordance with our mandate was entered, whereupon T. B. Merrill, receiver, sued out the present appeal.

The appellee has moved to dismiss the appeal, on the ground that no appeal lies from a decree entered in the circuit court in accordance with the mandate of this court; and this motion should be granted. In Stewart v. Salamon, 97 U. S. 361, it was expressly decided that an appeal from the decree which the circuit court passed in accordance with the mandate of the supreme court upon a previous appeal will, upon the motion of the appellee, be dismissed, with costs. In Humphrey v. Baker, 103 U. S. 736, the precise question was again decided, and in the same way. Stewart v. Salamon, supra, has been continuously approved. Mackall v. Richards, 116 U. S. 45, 6 Sup. Ct. 234; Gaines v. Rugg, 148 U. S. 228, 242, 13 Sup. Ct. 611; Railway Co. v. Anderson, 149 U. S. 237, 242, 13 Sup. Ct. 843; Smelting Co. v. Billings, 150 U. S. 31, 37, 14 Sup. Ct. 4; In re Sanford Fork & Tool Co., 160 U. S. 247, 259, 16 Sup. Ct. 291.

In opposition to the motion to dismiss it is urged that, under the act entitled "An act to establish circuit courts of appeals, and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891, an appeal lies to the supreme court of the United States from the decision of this court, and therefore the present appeal should be heard. If we concede that such appeal lies, we see in it no reason to vary from the uniform practice established by the supreme court in regard to second appeals in the same case.

The appeal is dismissed.

FARMERS' LOAN & TRUST CO. et al. v. McCLURE.

(Circuit Court of Appeals, Eighth Circuit. January 25, 1897.)

No. 785.

APPEAL—REVIEW—SOLICITOR'S COMPENSATION IN FORECLOSURE PROCEEDINGS.

When a question of the value of the services of a solicitor, rendered in a suit for the foreclosure of a mortgage, has been decided, upon conflicting evidence, by the court in which the suit is pending, and which is familiar with the proceedings therein and the amount of services rendered, such decision will not be disturbed by an appellate court, in the absence of an obvious error of law, or a serious and important mistake in the consideration of the evidence.

Appeal from the Circuit Court of the United States for the Eastern District of Arkansas.

J. G. Taylor (J. M. Taylor, Herbert B. Turner, David McClure, and Louis B. Rolston were with him on the brief), for appellant.

John McClure, for appellee.

Before CALDWELL, SANBORN, and THAYER, Circuit Judges.

SANBORN, Circuit Judge. This is an appeal from an interlocutory decree, which granted an intervening petition of John McClure, the appellee, for compensation for services and expenses as solicitor for the complainant in a suit to foreclose a railway mortgage. Prior to July 30, 1895, the holders of a large majority of the bonds secured by the mortgage made on August 2, 1892, by the Pine Bluff & Eastern Railroad Company to the Farmers' Loan & Trust Company, as trustee for the bondholders, consulted the appellee, John McClure, an attorney resident at Little Rock, in the state of Arkansas, regarding the foreclosure of this mortgage. They were anxious to have it foreclosed, and attempted to persuade the Farmers' Loan & Trust Company to employ McClure as its solicitor to conduct the foreclosure proceedings. The estate of Amos C. Barstow, which held a majority of these bonds, advanced to McClure the sum of $500 on account of his expenses and services, and he prepared a bill for the foreclosure of the mortgage upon the property of the railroad company. On July 30, 1895, the resident attorneys of the Farmers' Loan & Trust Company authorized him by telegraph to file the bill for the foreclosure of the mortgage upon the terms contained in a letter which followed the telegram. McClure filed the bill, but, when the letter was received, was unwilling to proceed with the litigation on the terms it disclosed. Before its receipt he had given notice of a motion for the appointment of a receiver of the property of the railroad company. After some correspondence between him and the attorneys for the trust company, he made a motion in the circuit court on August 19, 1895, for leave to withdraw from the case as a solicitor, because of differences arising between himself and the solicitors of the trust company, and the court took his application under advisement, and ordered him to continue to discharge his functions as a solicitor in the cause until the further order of the court. On October 12, 1895, he renewed his motion for leave to withdraw from the case, and the court granted it. On October 19, 1895, he filed an intervening peti-