

BeIn Vs. Heath

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Court : US Supreme Court

Decided On : 1851

Appeal No. : 53 U.S. 168

Appellant : Bein

Respondent : Heath

Judgement :

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Bein v. Heath

53 U.S. (12 How.) 168

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE EASTERN DISTRICT OF LOUISIANA

SYLLABUS

The proper condition of an injunction bond is "to answer all damages which the defendant may sustain in consequence of the injunction being granted."

Where a bond was given in order to obtain an injunction to suspend proceedings under an order of seizure and sale, and the condition was that the principal and sureties

"would pay to the plaintiff, in the case of seizure and sale, all such damages as he may recover against us, in case it should be decided that the said injunction was wrongfully obtained,"

this bond was irregular.

It conformed to the Louisiana practice, by which, if an injunction be dissolved, judgment is at once given for the debt, interest, and damages against the principal and sureties in the injunction bond.

But the equity practice in the courts of the United States is regulated by the laws of Congress and the rules of this Court made under the authority of an act of Congress, and one of those rules is that, when not otherwise directed, the practice in the High court of chancery in England shall be followed.

According to these rules, a court of equity cannot, when it dissolves an injunction, give judgment at the same time against the obligors. It merely orders the dissolution, leaving the obligee to proceed at law against the sureties if he sustains damage from the delay occasioned by the injunction.

This was an action brought by the defendant in error upon an injunction bond, and was a consequence of the case of [*Bein v. Heath*](#), 6 How. 228.

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A brief recital of the circumstances may be necessary.

In May, 1838, Mary Heath lent some money to Mary Bein, the wife of Richard Bein, and took a mortgage upon the separate property of the wife to secure the payment of two notes, one for \$10,711.71, and the other for \$535.50.

In 1840. Richard Bein applied for the benefit of the insolvent law, notwithstanding which the interest upon the loan continued to be paid to Mary Heath until 1842.

The interest then becoming in arrear, Mary Heath applied for, and obtained a writ of seizure and sale of the mortgaged property in May, 1843.

Bein and wife then filed a bill in the Circuit Court of the United States for the Eastern District of Louisiana to set aside the mortgage upon the ground that it was not executed conformably to law, and praying for an injunction to suspend proceedings under the order of seizure and sale. On 28 June, 1843, the court passed the order directing the injunction to issue as prayed, upon the complainants giving a bond with certain sureties named in the order to answer all damages which the defendant in that suit might sustain in consequence of said injunction being granted should the same be thereafter dissolved.

On 21 June, 1843, a bond was executed in the penalty of \$3,000, signed by Mary Bein, G. S Hawkins, and James McMasters, but instead of the condition's being in the manner prescribed by the court, it was as follows:

"Now the condition of the above obligation is that we, the above bound Mary Bein, Gilbert S. Hawkins, and James McMasters, sureties, will well and truly pay to the said Mary Heath, the defendant in said injunction and plaintiff in said case of seizure and sale, all such damages as she may recover against us in case it should be decided that the said injunction was wrongfully obtained."

"[Signed]"

"M. BEIN"

"G. S. Hawkins,"

"JAMES Mc MASTERS"

Upon the trial of the cause in the circuit court, that court decided that the mortgage was well executed, and dissolved the injunction. Bein and wife appealed to this Court. It came up for hearing at January term, 1848, and is reported in [47 U. S. 6](#)

How. 228. This Court having affirmed the judgment of the circuit court, the order of seizure and sale became released from the injunction, and was executed by the marshal. The mortgaged property was sold for only \$7,000.

In December, 1848, Mary Heath brought a suit by way of

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petition upon the injunction bond, alleging that she was greatly damaged by the wrongful issuance of said injunction; that she encountered long delays in obtaining any portion of the sum due to her; that she incurred many and heavy expenses in consequence of the said injunction, and was subjected to great vexation and trouble.

That she is entitled by law to damages, at the rate of ten percent per annum upon the amount enjoined; that she has paid various large sums to lawyers for their professional services in defending said injunction and in getting the same dissolved, *viz.*, to Messrs. Ellmore & King, attorneys at law, seven hundred dollars; to John R. Grymes, attorney at law, five hundred dollars; to J. W. Smith, five hundred dollars; and to attorneys and counselors in Washington to attend the argument of the case in the Supreme Court to Walter Jones, attorney at law, two hundred and fifty dollars, and Bradley, Esq., attorney at law, two hundred and fifty dollars.

That the trouble and labor of the petitioner was an injury to her of at least one thousand dollars.

That the damages thus caused to the defendant, as above alleged amount to about eight thousand six hundred dollars, which the said Mary Bein and the said Gilbert S. Hawkins are bound *in solido* to pay to the petitioner by virtue of the foregoing allegations, and the bond signed by them to the extent of three thousand dollars. As the damages greatly exceed the amount of the bond, the petitioner is entitled to judgment against the defendant for the whole penal sum of the said bond, *viz.*, for three thousand dollars, with interest from the date of judicial demand.

To this petition the general issue was pleaded, and in May, 1849, the cause came on for trial before the court, a jury being waived by agreement.

Two bills of exceptions were taken to rulings of the court in admitting certain evidence, as follows:

" *Circuit Court of the United States, Fifth Circuit* "

"Be it known that on the trial of the above suit, the counsel for the plaintiff, to maintain the allegations of his petition, offered to prove by witnesses the amount of fees paid by the plaintiff to Ellmore & King, J. R. Grymes, and J. W. Smith, Esqrs., her attorneys in the court below, in the suit in chancery of Bein and wife against said Heath, and in the proceedings had in the seizure and sale obtained by said Heath against said Bein, which said seizure and sale were enjoined in said suit in chancery, to the introduction of which the defendants, by their counsel, objected, on the ground that the employment of said counsel by

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said plaintiff occurred before the issuing of the injunction and executing and filing of the injunction bond in the suit, and before the said defendants had incurred any obligation to pay any damages, interest, or costs in said suit."

"And at the same time and place the said plaintiff, to maintain the allegations in her said petition, offered to prove by an attorney at law the supposed value of the legal services rendered by the counsel for the plaintiff, in the said chancery suit in the Supreme Court of the United States; to the introduction of which said evidence the defendants by their counsel, objected, on the ground that no evidence could be offered of a *quantum meruit*, under the issue formed between the parties aforesaid, the plaintiff in her petition having pleaded the payment to said counsel of a specific sum of money as their fees. But the court, being of the opinion that all of said evidence was admissible, received the same. Whereupon the counsel for the defendant excepted to both rulings of the court as contrary to law, and prays that the bill of exceptions may be signed and sealed and made a part of the record, which is accordingly done."

"THEO. H. Mc CALEB [SEAL]"

" *U.S. Judge* "

" *Circuit Court of the United States for the Fifth* "

" *Circuit and District of Louisiana* "

"Be it known, that on the trial of this suit the plaintiff, by her counsel ____ _____, to maintain the allegations of her petition, offered to prove that a large portion of the rent of the mortgaged premises for the sale of which she had issued against Mary Bein her executory process has not been paid over to her by the tenant to whom the premises had been leased before the issuing of the injunction to stay said process, to the introduction of which evidence the defendants by their counsel objected as irrelevant to the issue joined and because the court had appointed the marshal of the United States the receiver to collect said rent, and to hold the same subject to the final judgment of the court, and that the loss of said rent constituted no part of the damage sustained by the plaintiff by the issuing of the injunction for which the defendants are legally liable on the injunction bond sued on, but the court, being of the opinion that said evidence was admissible, received the same. To the admission of which said evidence the defendants by their counsel except and pray that this their bill of exceptions may be signed, sealed, and made a part of the record, which is done."

"THEO. H. Mc CALEB [SEAL]"

" *U.S. Judge* "

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On 14 May, 1849, the court pronounced its judgment, and after sundry proceedings which it is not necessary to state, on 15 June, 1849, the judgment was signed as follows:

JUDGMENT

"MARY HEATH"

"v. No. 1751"

"MARY and RICHARD BEIN *et. al.* "

"The parties herein having waived the jury and submitted this case to the court after argument on the evidence, and the court being satisfied from the evidence that the plaintiff has suffered damages from the injunction obtained by Mary Bein and her husband to a greater extent than the amount of the penalty in the bond sued on and that the plaintiff is entitled to recover in this suit to the extent of the penalty of the bond against the defendants *in solido*: "

"It is hereby ordered, adjudged, and decreed that the plaintiff have judgment against Mary Bein and Gilbert S. Hawkins, and James McMasters *in solido* for the sum of three thousand dollars, with interest from the second day of December, A.D. 1848 until paid, and costs of suit."

"Judgment rendered 14 May, 1849."

"Signed 15 June, 1849."

"THEO. H. Mc CALEB [SEAL] *U.S. Judge* "

On 19 June, the court passed the following order:

"On motion _____ Eggleston, Esq., of counsel for defendants, and on his representing to the court that the said defendants felt aggrieved at the judgment herein rendered on the 15th instant and that they desire to have a writ of error, that the proceedings may be reviewed in a higher court, it is ordered that a writ of error be, and the same is, hereby allowed to the said defendants, returnable to the next term of the Supreme Court of the United States on their furnishing bond with S. W. Oakey, as surety, in the penal sum of four thousand six hundred dollars, conditioned as the law requires."

Upon this writ of error the case came up to this Court.

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MR. CHIEF JUSTICE TANEY delivered the opinion of the Court.

This is an action on an injunction bond given by Mary Bein, one of the plaintiffs in error in a suit in equity in the Circuit Court of the United States for the Eastern District of Louisiana, in which Bein and wife were complainants and Myar Heath, the present defendant in error, the respondent.

It appears that Mary Bein executed certain promissory notes for the payment of a large sum of money and mortgaged her separate and individual property to secure the debt. These notes and the mortgage became the property of Mary Heath as the legal representative of Sherman Heath, who loaned the money for which they were given and who died before any proceedings were instituted to recover it.

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The notes not being paid, Mary Heath obtained a writ for the seizure and sale of the mortgaged premises, according to the laws of Louisiana. And Bein and wife thereupon filed their bill in the circuit court of the United States, setting forth that the separate property of Mary Bein, which had been seized, was not legally or equitably chargeable with the payment of this debt, and praying an injunction to stay the sale. It is unnecessary to state the grounds on which the complainants asked relief, as the merits of that controversy are not involved in the present suit. The court passed the order directing the injunction to issue, as prayed, upon the complainants' giving a bond with certain sureties named in the order to answer all damages which the defendant in that suit might sustain in consequence of said injunction's being granted should the same be thereafter dissolved.

The bond was given in the penalty and with the sureties mentioned in the order. But instead of making the condition such as the court had directed, which was the proper one according to established chancery practice, the complainants adopted,

we presume, the form used in the state courts of Louisiana in cases where the law requires an injunction bond to stay execution on a judgment or order of seizure and sale. The condition is as follows:

"Now the condition of the above obligation is that we, the above bounden Mary Bein, and Gilbert S. Hawkins, and James McMasters, sureties, will well and truly pay to the said Mary Heath, the defendant in said injunction and plaintiff in said case of seizure and sale, all such damages as she may recover against us in case it should be decided that the said injunction was wrongfully obtained."

The injunction, however, was issued by the clerk upon the filing of this bond. And the suit proceeded to final hearing, when the court passed the following decree:

"This cause came on for trial on 29 May, 1844, and was argued by counsel, wherefore, in consideration of the law and the evidence and the rules and principles of equity being in favor of the respondent, Mary Heath, it is ordered, adjudged, and decreed that the complainant be dismissed with costs. And it is further ordered, adjudged, and decreed that the injunction granted in this case be dissolved and the respondent be allowed to proceed with the writ of seizure and sale granted in accordance with the prayer of her original petition."

The complainants appealed to this Court, and after argument by counsel the decree of the circuit court was affirmed with costs. And thereupon the present defendant in error brought

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the suit which is now before us, upon the injunction bond hereinbefore stated, to recover certain damages stated in her petition for which she alleges the obligors in that bond are liable. The suit is by petition, in the usual form of Louisiana practice, and the judgment of the circuit court being in favor of the plaintiff in that suit, the plaintiffs in error, who were defendants in the court below, have brought the case before this Court.

It appears from the exceptions and the judgment in the case that the circuit court regarded this bond as the same in principle with the bond required by the laws of Louisiana where an injunction is obtained to stay execution upon an order for the seizure and sale of mortgaged property, and therefore considered this bond as creating the same obligations and giving the same rights to parties as if it had been given under the laws of the state. And by these laws, when the party obtains an injunction and fails to support it at the trial, judgment is given against him and his sureties for the debt, interest, and damages at the time the injunction is dissolved, and it forms part of the same judgment. 8 Rob. 20. The sureties in the bond are treated as parties to the suit, and the amount of interest and damages which the court may award by their judgment is regulated by the laws of the state. It is with reference to this mode of proceeding that the injunction bond in question appears to have been framed, and it is to this judgment, as prescribed by the laws of the state, that the condition must refer when it binds the obligors to pay all such damages the obligee might recover against them in case it should be decided that the injunction was wrongfully obtained. There must be a recovery -- that is, a judgment against them -- before the condition is broken and before any proceeding could be had upon the bond.

Now there is manifest error in subjecting the parties to an injunction bond given in a proceeding in equity in a court of the United States to the laws of the state. The proceeding in a circuit court of the United States in equity is regulated by the laws of Congress and the rules of this Court made under the authority of an act of Congress. And the 90th Rule declares that when not otherwise directed, the practice of the High Court of Chancery in England shall be followed. The 8th Rule authorizes the circuit court, both judges concurring, to modify the process and practice in their respective districts. But this applies only to forms of proceeding and mode of practice, and certainly would not authorize the adoption of the Louisiana law defining the rights and obligations of parties to an injunction bond. Nor do we suppose any such rule has been adopted by the Court. And if it has, it is unauthorized by law and cannot regulate the rights or obligations of the parties.

And when an injunction is applied for in the Circuit Court of the United States sitting in Louisiana, the court grants it or not according to the established principles of equity, and not according to the laws and practice of the state in which there is no court of chancery, as contradistinguished from a court of common law. And they require a bond or not from the complainant, with sureties, before the injunction issues as the court, in the exercise of a sound discretion, may deem it proper for the purposes of justice. And if, in the judgment of the court, the principles of equity require that a bond should be given, it prescribes the penalty and the condition also. And the condition prescribed by the court in this case, but which was not followed, is the one usually directed by the court.

In proceeding upon such a bond, the court would have no authority to apply to it the legislative provisions of the state. The obligors would be answerable for any damage or cost which the adverse party sustained by reason of the injunction from the time it was issued until it was dissolved, but to nothing more. They would certainly not be liable for any aggravated interest on the debt, nor for the debt itself, unless it was lost by the delay, nor for the fees paid to the counsel for conducting the suit.

But the bond in the case before us is not one to pay the damages which the opposing party should sustain by reason of the injunction, but it is to pay the damages that might be recovered against them, obviously referring, we think, to the practice in Louisiana above mentioned. A court proceeding, according to the rules of equity, cannot give a judgment against the obligors in an injunction bond when it dissolves the injunction. It merely orders the dissolution, leaving the obligee to proceed at law against the sureties if he sustains damage from the delay occasioned by the injunction. This was done by the circuit court in the former suit between the parties. No judgment was or could be given against the obligors for debt or damages, and none were recovered against them previously to the institution of this suit. The contingency on which they agree to pay has not, therefore, happened, and the condition of the bond is not broken, and consequently no action can be maintained upon it. It would be against the well established rule of the chancery court to extend the liability of the surety by any

equitable construction beyond the terms of his contract. And in a proceeding upon the bond, the liability of the principal obligor cannot be extended beyond that of the surety.

In this view of the case, it is unnecessary to examine the questions which have been raised as to the Louisiana laws in

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relation to injunction bonds. The judgment of the circuit court must be

Reversed and a venire de novo awarded.

ORDER

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Eastern District of Louisiana and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this Court that the judgment of the said circuit court in this cause be and the same is hereby reversed with costs, and that this cause be and the same is hereby remanded to the said circuit court for further proceedings to be had therein in conformity to the opinion of this Court.

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