

In Re Haberman Manufacturing Co.

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SooperKanoon Citation : sooperkanoon.com/87395

Court : US Supreme Court

Decided On : Feb-06-1893

Appeal No. : 147 U.S. 525

Appellant : In Re Haberman Manufacturing Co.

Judgement :

In re Haberman Manufacturing Co. - 147 U.S. 525 (1893)

U.S. Supreme Court In re Haberman Manufacturing Co., 147 U.S. 525 (1893)

In re Haberman Manufacturing Company

No number

Submitted January 30, 1893

Decided February 6, 1893

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ORIGINAL

SYLLABUS

Under 7 of the Act of March 3, 1891, c. 517, 26 Stat. 826, 828, which provides for an appeal to the circuit court of appeals from an interlocutory order or decree granting or continuing an injunction on a hearing in equity, the granting of a stay of the operation of the injunction during the pendency of the appeal, by the court which granted or continued it, is not a matter of right, but is a matter of discretion.

Such discretion of that court cannot be controlled by a writ of mandamus from this Court.

On the 5th of January, 1893, an interlocutory decree was made, on final hearing, in a suit in equity in the Circuit Court of the United States for the Southern District of New York brought against the Haberman Manufacturing Company for the infringement of a patent for improvements in the manufacture of enamelled ironware. The decree held that the patent was valid and had been infringed by the defendant, and awarded a recovery of profits and damages, to be ascertained on a reference to a master, and also a perpetual injunction. The defendant perfected an appeal to the Circuit Court of Appeals for the Second Circuit from such interlocutory decree, and, on the 20th of January, 1893, applied to the circuit court for a stay of proceedings in that court pending the appeal, including a stay of the injunction, and for the acceptance and approval of a supersedeas bond for that purpose, which bond, in any amount satisfactory to the court, it offered to file. But the court denied the application. The defendant now applies to this Court for leave to file a petition that a writ of mandamus issue to the judges of the circuit court commanding them to approve and direct the filing of a supersedeas bond in such amount as that court shall fix, to supersede the injunction, and to enter an order vacating, suspending,

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or superseding the injunction, which was issued on January 5, 1893, and subsequently served.

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MR. JUSTICE BLATCHFORD delivered the opinion of the Court.

It is contended for the petitioner that it is entitled as a matter of right to a supersedeas of the injunction pending the appeal, and that the circuit court had no discretion to refuse it. As authority for this alleged right, reference is made to 7 of the Act of March 3, 1891, c. 517, 26 Stat. 828, which provides

"That where, upon a hearing in equity in a district court or in an existing circuit court, an injunction shall be granted or continued by an interlocutory order or decree in a cause in which an appeal from a final decree may be taken under the provisions of this act to the circuit court of appeals, an appeal may be taken from such interlocutory order or decree granting or continuing such injunction to the circuit court of appeals, *provided* that the appeal must be taken within thirty days from the entry of such order or decree, and it shall take precedence in the appellate court, and the proceedings in other respects in the court below shall not be stayed unless otherwise ordered by that court during the pendency of said appeal. "

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It is clear that this is a case in which the appeal was properly taken, and within the time limited, and it is contended for the petitioner that under 7, it has an absolute right to a supersedeas of the injunction pending the appeal on the filing of a bond satisfactory to the circuit court. Reference is made to the case of *Pasteur v. Blount*, 51 F. 610, in the Circuit Court for the Southern District of Ohio, where, a supersedeas having been allowed, on granting a like appeal a motion to vacate the supersedeas was denied, the court (Jackson, Circuit Judge), saying that, under 7, there was no discretion in the court or judge allowing the same to deny or refuse the appellant a supersedeas.

The argument made is that the use, in 7, of the words "in other respects" implies that there must be a stay as to the operation of an injunction, while the only discretion given is as to ordering a stay "in other respects" than as to the injunction. But there is no express provision that the operation of the injunction

must be stayed. The matter is rested wholly on implication. The defendant is sought to be protected by requiring him to take an appeal within thirty days and by giving precedence to the case in the appellate court, and discretion is given to the circuit court to proceed or not on the interlocutory decree pending the appeal. Where a plaintiff has an adjudication that he is entitled to an injunction, he has rights which cannot be abridged or stayed by language which is not more clear and unambiguous than that contained in 7. The matter may be made clear by legislation. As it stands, the circuit court had a discretion to grant or refuse a supersedeas, and its discretion, as we have uniformly held, *In re Hawkins, Petitioner, ante*, p. [147 U. S. 486](#) cannot be controlled by a writ of mandamus.

Application denied.