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Case No. 14,217.

TUCKER v. CARPENTER.

{Hempst 440.}[1]

Circuit Court, D. Arkansas. Oct., 1841.

INJUNCTION—DISSOLUTION—REINSTATEMENT.

1. Where an injunction has been dissolved on the coming in of the answer denying the equity of the bill, and testimony has afterwards been taken and published tending to show the right of the complainant to relief, the injunction, on application, may be reinstated.

2. The granting or dissolving an injunction rests in the sound discretion of the chancellor, and on the justice and equity of each particular case.

{Cited in Commerford v. Thompson, 1 Fed. 424.}

{This was a bill in equity by Wood Tucker against George W. Carpenter. Heard on application to reinstate an injunction, which had been dissolved.}

Chester Ashley and George C. Watkins, for complainant.

F. W. Trapnall and John W. Cocke, for defendant.

JOHNSON, District Judge. In this case the injunction was dissolved on the coming in of the answer denying the equity of the bill. 267 Testimony has been taken and published on the part of the complainant since that time, which certainly goes far to sustain the complainant's right to relief, as set forth in the bill; and at this point an application, supported by special reasons, is made by the complainant to reinstate the injunction. The counsel of the defendant contend that this cannot be done, and consequently resist the application. It is not to be denied that there are many cases where an injunction will be revived, although it has been dissolved on the merits. Eden, Inj. 146,153; Fanning v. Dunham, 4 Johns. Ch. 36. Where new facts are stated in an amended or supplemental bill, a fresh injunction may be awarded on special motion.

Travers v. Lord Stafford, 2 Ves. Sr. 19, 21. It is true that in such a case an Injunction is not as a matter of course, but depends on the sound discretion of the court And it may be safely asserted as a general rule in our courts, that all injunctions depend upon the discretion of the chancellor, and are to be granted or denied according to the justice and equity of each particular case. A writ of injunction may be said to be a process capable of more modifications than any other In the law; it is so malleable that it may be moulded to suit the various circumstances and occasions presented to a court of equity. It is an instrument in its hands capable of various applications for the purposes of dispensing complete justice between the parties. It may be special, preliminary, temporary, pr perpetual; and it may be dissolved, revived, continued, extended, or contracted; in short, it is adapted and is used by courts of equity as a process for preventing wrong between, and preserving the rights of parties in controversy before them. The court is always open to reinstate an injunction. Radford's Ex'rs v. Innes' Ex'rs, 1 Hen. & M. 8; Bellingslea v. Bradford, 1 Bland, 568. It could not, however, be allowed to a complainant, after an injunction had been denied or dissolved on the merits, to move for another on the same state of case; nor could he have one upon an immaterial amendment in his bill. But on the other hand, where an injunction has been dissolved, and it afterwards appears, from proof taken, that the injunction ought to be continued, a court, in the exercise of a sound discretion, will reinstate it because otherwise irreparable mischief might ensue. In this case, the testimony taken since the filing of the answer and dissolution of the injunction goes far towards overturning the answer and sustaining the right of the complainant to relief, and if not weakened by counter proof, would probably be sufficient for that purpose; but at all events is, in my judgment, quite sufficient to warrant me in reinstating

the injunction originally granted until the further order of the court. Ordered accordingly.

NOTE. In April, 1844, this cause came on for final hearing on the equity side of the circuit court, before the Hon. Peter V. Daniel, associate justice of the supreme court, and the Hon. Benjamin Johnson, district judge, and the injunction was by decree made perpetual.

[1] {Reported by Samuel H. Hempstead, Esq.}