

SOCIETE ANONYME DU FILTRE CHAMBERLAND SYSTEME PASTEUR *et al.*
v. BLOUNT *et al.*

(Circuit Court, S. D. Ohio, W. D. August 13, 1892.)

No. 4,541.

APPEAL—SUPERSEDEAS—ORDER GRANTING INJUNCTION.

Upon an appeal, under Act March 3, 1891, § 7, from an interlocutory order granting an injunction, appellant is entitled to a *supersedeas*, as a matter of right, upon furnishing such a bond as the court in its discretion may require for the protection of the appellee.

In Equity. Pending on motion of the complainant to vacate and set aside the *supersedeas* heretofore allowed the defendant Blount on the appeal from the order granting complainant an injunction. Motion denied.

Paul A. Staley, for complainant.

H. A. Toulmin, for respondent.

JACKSON, Circuit Judge. The motion to vacate and set aside the *supersedeas* heretofore allowed the defendant Blount is denied. Under the seventh section of the act of March 3, 1891, said defendant had the right to appeal from the order of the circuit court granting the injunction, and, to make such appeal effectual, he had a right to the *supersedeas* upon such terms as the court or judge granting it might impose. In the prosecution of an appeal under that section, there is no discretion in the court or judge allowing the same to deny or refuse the appellant a *supersedeas*. There is a discretion in respect to the bond that may be required of the appellant for the protection and indemnity of the appellees. Any other construction of said section would defeat the very aim and purpose of its enactment,—the previous practice and legislation in relation to appeals, and their effect, render it very clear that the appeal allowed by said section was intended to suspend and vacate the order granting the injunction. The motion to vacate and set aside the *supersedeas* is denied.

OREGON SHORT LINE & U. N. RY. CO. v. ILWACO RAILWAY & NAVIGATION Co.

(Circuit Court, D. Washington, W. D. August 27, 1892.)

1. CARRIERS—USE OF WHARF OF RAILROAD COMPANY BY STEAMBOATS.

A railroad company, owning a wharf extending into public navigable waters, maintained thereon a station and passenger depot, and used the wharf for its own line of steamers, in connection with its railroad traffic. *Held*, that a steamboat company, not a rival of the railroad company in its railroad business, was entitled to the use of the wharf, for a reasonable compensation, to the extent of receiving and discharging passengers and freight.

2. SAME—FACILITIES AT RAILROAD WHARF.

That such wharf is too small to accommodate steamers, other than those of the railroad company, is not a ground for denying to a steamboat company, not a competitor except in its steamboat business, the right to use the wharf, for a reasonable wharfage, for the purpose of receiving and discharging freight and passengers, since a railroad, as a public carrier, must provide necessary facilities for the transaction of its business with safety and reasonable convenience to its passengers.

In Equity. Suit for an injunction to compel the defendant, a railway corporation and owner of a wharf, to allow steamboats operated by the complainant to receive and discharge passengers and freight upon said wharf. Injunction granted.

W. W. Cotton, for complainant.

C. W. Fulton, for defendant.

HANFORD, District Judge. The complainant's grievance is that the defendant by its ownership of a wharf at the town of Ilwaco, extending into the navigable waters of Baker's bay, and by maintaining thereon a railroad station and passenger depot, appurtenant to its line of railway, and by making said wharf a landing place for steamboats owned and operated by it, and refusing to permit steamboats owned and operated by the complainant to land at said wharf, imposes upon all passengers and freight received by or discharged from its railroad, at said station, the necessity of being carried to and from other places by its steamboats, or suffer inconvenience in being carried to the next station on the line of said road, and has thereby contrived to secure a monopoly in the transportation of freight and passengers to and from the station upon said wharf. To prevent the defendant from giving such undue preference to its own steamboats, and from so unjustly discriminating against the complainant, it prays that by an injunction the right to receive and discharge passengers and freight upon and from its steamboats at said wharf may be enforced. The complainant concedes the right of the defendant, as owner of said wharf, to charge and collect reasonable wharfage from all vessels using the same, and consents that whatever relief may be granted to it shall be upon equitable terms, and upon such conditions as the court may impose for the protection of the defendant's rights.

The defendant's counsel, in opposition to the prayer of the bill, argues that, by conceding the right to remuneration for the use of the wharf, the