

ment, for no money can be refunded except upon proof of the facts stated in the protest. So far as the question affects the practice in such cases generally it is manifestly for the interest of all that such questions should be determined with as little annoyance, expense and delay as possible. It was partly to produce this result that the board was established. If the practice before the board is to be more cumbersome and involved than under the old system the public will reap little advantage by the change. Where the board is of the opinion that the protest is frivolous on its face or that it has absolutely no law to sustain it I can see no reason why they should not say so and have the question of law thus raised disposed of in limine without incumbering the record with a mass of testimony which may in the end turn out to be mere worthless rubbish.

The decision of the board should be reversed.

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**LALANCE & GROSJEAN MANUF'G CO. v. HABERMANN MANUF'G CO.**

(Circuit Court, S. D. New York. January 5, 1893.)

**PATENTS FOR INVENTIONS—INTERLOCUTORY DECREE — APPEALS—SUPERSEDEAS.**

Upon an appeal to the circuit court of appeals from an interlocutory decree sustaining a patent, declaring infringement, and granting an injunction, defendant is not entitled to a supersedeas as a matter of right, but the matter rests in the discretion of the circuit court, and the injunction will be stayed only under exceptional circumstances. *Societe v. Blount*, 51 Fed. Rep. 610, disapproved.

**In Equity.** Bill by the Lalance & Grosjean Manufacturing Company against the Habermann Manufacturing Company for infringement of a patent. The patent was heretofore sustained, infringement declared, and an injunction granted. See 53 Fed. Rep. 375, 380. The case is now heard on a motion to stay the injunction pending an appeal to the circuit court of appeals, under section 7 of the judiciary act of March 3, 1891. Denied.<sup>1</sup>

Robert N. Kenyon, for the motion.  
Arthur v. Briesen, opposed.

**COXE, District Judge.** This motion presents the situation which usually arises where a patent has been sustained. The defendant asserts that his business will be irreparably injured if he is compelled to stop infringing. The complainant, on the other hand, is equally strenuous in contending that his business will be destroyed if the infringement continues. If the two parties stood on equal footing, the question would be a difficult one. But they do not. The complainant is the owner of a valid patent and the defendant is a tres-

<sup>1</sup>Subsequent to this decision the respondent applied to the supreme court of the United States for leave to file a petition for a writ of mandamus to the circuit judge, requiring him to allow a supersedeas, but that court denied the application, holding, as did the circuit court, that the granting or refusing of a supersedeas was within the discretion of the circuit court, and that the supreme court had no jurisdiction to control that discretion by a writ of mandamus. See 13 Sup. Ct. Rep. 527.

passer. The one is right, and the other is wrong. In such circumstances the former is entitled to relief. The rule as enunciated in *Societe v. Blount*, 51 Fed. Rep. 610, 61 O. G. 1484, is not, as I understand it, the law of this circuit. The injunction has sometimes been suspended here after final hearing, but only in exceptional cases. This is not such a case.

I am convinced that the rights of the public will not suffer and that the defendant's employes will not be disturbed if the usual course is adopted here. The defendant can enamel its goods in any way it sees fit, and the record shows that the ways are numerous, so long as it does not use the patented process. That any injury will result, other than that which generally follows where an injunction overtakes an infringement, I cannot believe. The injury here will not be unusual or exceptional. A bond will offer little or no indemnity. An injunction is the complainant's only available remedy. I think the case should take the ordinary course.

The motion is denied.

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#### BRIGGS v. CENTRAL ICE CO.

(Circuit Court, N. D. New York. February 20, 1893.)

No. 6,028.

#### PATENTS FOR INVENTIONS—INFRINGEMENT—ICE PLANERS.

In letters patent No. 367,267, granted July 26, 1887, to John N. Briggs, for an improvement in ice planers, the claim was as follows: "The combination with the cutter head and racks, directly attached thereto, of the guides for both cutter head and the racks, arranged perpendicularly to the plane of the elevator, the pinions mounted on said guides, and engaging in said racks, and the levers or arms for operating said pinions, \* \* \* so that the depth of the cut may be directly and positively regulated by means of the levers." *Held* that, in view of the prior state of the art, this claim must be limited to the precise mechanism described; and hence the patent is not infringed by a device wherein the cutter head is moved, and the depth of the cut regulated, by means of endless chains passing over sprocket wheels.

In Equity. Suit by John N. Briggs against the Central Ice Company to restrain the infringement of a patent. Bill dismissed.

Benjamin F. Lee, for complainant.

Edwin H. Brown and Frank L. Freeman, for defendant.

COXE, District Judge. This is an action for the infringement of letters patent, No. 367,267, granted to John N. Briggs, the complainant, July 26, 1887, for an improvement in apparatus for planing cakes of ice. It is not a pioneer patent, but relates only to improvements on the apparatus for which letters patent No. 346,576 were granted to the patentee August 3, 1886, in which a similar ice planer attached to an ice elevator is described and claimed. The object of the patent is to facilitate the adjustment of the planing device described in the prior patent and to render it more effective in operation. The usual method of elevating ice from the river or pond to the storing house is by means of an elevator or railway pro-