

ing the defendants from manufacturing the switch plate covered by the patent No. 424,695, as described in claims 3, 11, and 19, and defendants will be further restrained from manufacturing the device covered by patent No. 495,443, in claims 6, 7, 8, 12, and 16.

If, as contended by defendants' counsel, the defendants are not manufacturing or selling these devices, no harm can result from the allowance of an injunction and restraining order. If, on the contrary, they are making any characteristic parts of the combination covered by the several claims hereinbefore stated, and selling them or disposing of them in such manner as to make it difficult for the complainant to prove infringement, they ought not to be encouraged in any such trick or device. If, as contended, the infringements are so few and so trifling that they cannot be proven, no harm can result to the defendants. If, on the other hand, the infringements are cunningly hidden from observation, and difficult to prove, the complainant ought not to suffer by it. This patent having been established at great expense, and after long litigation, the complainant is entitled to the full benefit conferred upon it as the owner of a valid patent under the patent laws, and should have the full protection of the court. A decree may be prepared accordingly.

THOMSON-HOUSTON ELECTRIC CO. v. OHIO BRASS CO. et al. (two cases).

(Circuit Court, N. D. Ohio, E. D. October 26, 1896.)

Nos. 5,510 and 5,511.

PATENT SUITS—PRELIMINARY INJUNCTIONS—PRIOR ADJUDICATIONS—APPEAL AND SUPERSEDEAS.

A court, in granting a preliminary injunction in a patent suit, followed prior decisions of other courts on the merits. *Held*, that it would also follow those courts in refusing a supersedeas on allowing an appeal.

These were two suits in equity by the Thomson-Houston Electric Company against the Ohio Brass Company and others to restrain the alleged infringement of the Van Depoele patents, Nos. 495,443 and 424,695, for electric trolley switching devices. Preliminary injunctions were heretofore granted. 78 Fed. 139. The present hearing is in relation to the granting of an appeal and supersedeas.

Betts, Hyde & Betts and Squire, Sanders & Dempsey, for complainant.

Frank T. Brown, for defendants.

RICKS, District Judge. In these two cases, the complainant's solicitors were served with notice by solicitors for the defendants that on the 1st day of October, 1896, at 10 o'clock a. m., they would apply to the court for an order superseding the injunction allowed in the opinion rendered in these cases, and for the allowance of an appeal. Solicitors for the defendants appeared at the time stated. Counsel for the complainant, through a clerk in their office, had before that time appeared and asked for information with reference to

a hearing, which the court supposed referred to the case of the Continental Trust Company against the Toledo, St. Louis & Kansas City Railroad Company. Acting upon this supposition, the court advised the representative of complainant's solicitors that the case would be heard at 11 o'clock that morning. In the meantime, solicitors for the defendants appeared, and, no one appearing for the complainant, the orders as prepared by counsel for the defendants were signed *ex parte*. An hour afterwards, when complainant's solicitors appeared for the hearing of the motion, the court for the first time discovered that a misunderstanding had existed, and that the inquiry to which reference is made in this opinion really referred to the hearing in these cases. In the meantime, defendants' solicitors had left the city. Thereupon the court directed that the orders be not entered upon the journal, and counsel for the defendants were thereupon notified of the mistake. Correspondence has followed, the purport of which has been to ask the court to supersede the injunction pending the appeal, with an intimation that the opinion in the cases relied upon in the opinion cited by the court were afterwards modified in the case of Thomson-Houston Electric Co. v. Kelsey Electric Railway Specialty Co. (in the United States circuit court of appeals for the Second circuit) 22 C. C. A. 1, 75 Fed. 1006. The court is perfectly willing to allow this order to be modified in the same way in which the court of appeals modified the order in the Kelsey Case; but, inasmuch as, in all the cases in the First, Second, and Third circuits, the supersedeas has been refused, and inasmuch as this court has followed the decisions of those courts upon the merits, I see no reason now why the supersedeas should be allowed.

It is claimed by the solicitor for the defendants that, as soon as the *ex parte* orders were approved by me, on the 1st of October, the defendants were notified that the supersedeas had been allowed, and that thereupon they made some contracts in perfect good faith before any notice was received that the orders were held for further consideration. If the defendants can show by affidavit that, acting in perfect good faith, they made bona fide contracts, and that these were made before they had notice that the orders were held, the court will grant them proper relief in some form upon proper presentation of the facts. The order allowing the appeal may be entered, but the injunction will not be superseded pending that appeal.

THE MUTUAL.

THE J. PERCY BARTRAM.

BARNEY DUMPING BOAT CO. v. THE MUTUAL.

SAME v. THE J. PERCY BARTRAM.

(District Court, D. Connecticut. January 9, 1897.)

1. ADMIRALTY PRACTICE—RELEASE ON STIPULATION—ADDITIONAL SECURITY.

After a vessel has been released on stipulation, she is freed forever of the lien, and the court therefore has no authority to require the claimant to give any additional security.

2. COLLISION—SCHOONER AND TOW—CHANGE OF COURSE—NEGLIGENT LOOKOUT.

Where a schooner collided at night with the hindmost of two dumpers in tow of a tug, *held*, on the evidence, that the schooner changed her course, and had a negligent or incompetent lookout, and consequently was solely in fault.

This was a libel by the Barney Dumping Boat Company against the steamtug Mutual and the schooner J. Percy Bartram to recover damages resulting from a collision.

Carpenter & Park, for libelant.

Goodrich, Deady & Goodrich, for the J. Percy Bartram.

Macklin, Cushman & Adams, for the Mutual.

TOWNSEND, District Judge. Libel in rem. A preliminary question is raised herein by motion of claimant to vacate order for additional security. The parties originally agreed that the bond should be fixed at \$5,000, which was accordingly filed, and the vessel was duly released. Afterwards, on an ex parte application, the court made an order for additional security in accordance with the provisions of rule 23 of the district court rules in the Southern district of New York. The claimant has failed to file any additional bond, and claims that the court had no power to make said order, because there is no express rule authorizing the court to make such order in this district; and further because the vessel was released by consent upon the filing of said bond for \$5,000. I think the point is well taken. In *The William F. M'Rae*, 23 Fed. 558, Judge Brown says:

"That a vessel discharged from arrest upon admiralty process by the giving of a bond or stipulation for her value, or for the payment of the amount claimed in the libel, returns to her owner freed forever from the lien upon which she was arrested, and can never be seized again for the same cause of action, even by the consent of parties, is a proposition too firmly established to be open to question. *The Kalamazoo*, 9 Eng. Law & Eq. 557; *The Wild Ranger*, Brown. & L. 84; *The Union*, 4 Blatchf. 90, Fed. Cas. No. 14,346; *The White Squall*, 4 Blatchf. 103, Fed. Cas. No. 17,570; *The Old Concord*, 1 Brown, Adm. 270, Fed. Cas. No. 10,482; *Senab v. The Josephine*, 4 Cent. Law J. 262, Fed. Cas. No. 12,663."

See, also, *The Haytian Republic*, 154 U. S. 118, 14 Sup. Ct. 992.

In *The Union*, 4 Blatchf. 90, Fed. Cas. No. 14,346, Judge Nelson holds that the vessel, having been discharged from arrest, upon the giving of bond or stipulation, returns into the hands of her owners discharged from the lien or incumbrance which constituted the foundation for the proceeding against her. See, also, Henry, Adm. Jur.