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Injunctions—Method of Continuing Dissolved Temporary Injunction Pending Appeal.

In a recent West Virginia case¹ a temporary injunction restraining the defendant from violating certain contracts, granted upon the filing of plaintiff's bill, was, after a hearing, dissolved. A stay, pending appeal, was refused. Subsequently, the appellate court granted an appeal and a supersedeas, for which the plaintiff executed the required bond. Later, the defendant, relying on advice of counsel that the supersedeas did not reinstate the temporary injunction, violated the express terms of the order. In proceedings for contempt, it was held that the supersedeas fully restored the temporary injunction and that the defendant was guilty.

When there is an appeal from an order dissolving a temporary injunction, there are three main ways in the various states by which the injunction may be reinstated and continued in force pending the appeal: (1) the appeal itself; (2) issuance by the appellate court of a supersedeas of stay of the order of dissolution; (3) a stay order entered by the trial court. The first method obtains in only a few states.² In most jurisdictions, unless a statute otherwise provides, an appeal does not of itself have the effect of continuing the dissolved injunction.³ As a rule, an appeal and an order from the appellate court granting a supersedeas or stay of the order of dissolution restores the injunction to its full effect until the appeal is disposed of.⁴ Even in the jurisdictions where the matter is controlled ex-

¹ State *ex rel.* O. Hommel Co. v. Fink, 161 S. E. 557 (W. Va. 1932).

² State *ex rel.* Leary v. Tenth Judicial District, 78 Minn. 464, 81 N. W. 323 (1900) (appeal operates to revive and continue the injunction); State v. Baker, 62 Neb. 840, 88 N. W. 124 (1901) (statute provides that appeal reinstates the dissolved injunction); see Ford v. State, 209 S. W. 490, 491 (Tex. Civ. App. 1919).

³ Hulan v. Murfin, 159 Mich. 605, 124 N. W. 574 (1910) (dissolved injunction not revived by appeal); Roberts v. Kartzke, 18 Idaho 552, 111 Pac. 1 (1910) (does not operate as a supersedeas of the order appealed from); Gallup v. St. Louis, I. M. & S. Ry. Co., 158 Ark. 624, 251 S. W. 30 (1923); Reyburn v. Sawyer, 128 N. C. 8, 37 S. E. 954 (1901).

In some states the trial court has the power to preserve the *status quo* although the case has been removed by appeal to the supreme court. Mews v. Home Bank of DeWitt, 133 Ark. 144, 201 S. W. 1106 (1918). In others the dissolved injunction may be reinstated only by order of the appellate court. Cutrona v. Mayor & Council of Wilmington, 14 Del. Ch. 262, 125 Atl. 417 (1924). *Contra*: Napa Valley Electric Co. v. Calistoga Electric Co., 174 Cal. 411, 163 Pac. 497 (1917) (appellate court has no power to reinstate dissolved injunction).

⁴ State *ex rel.* Woodcock v. Barrick, 80 W. Va. 63, 92 S. E. 234 (1917); New River Mineral Co. v. Seeley, 117 Fed. 981 (W. D. Va. 1902); McMichael v. Eckman, 26 Fla. 43, 7 So. 365 (1890) (statute provides for supersedeas); Smith v. Whitfield, 38 Fla. 211, 20 So. 1012 (1896).

clusively by statute the provisions are by no means uniform. It is provided, in a few states, that the appeal automatically continues the injunction in force.⁵ Other statutes state that the appeal shall not have this effect unless it shall be so ordered by the trial court.⁶ In some jurisdictions the injunction may, at the discretion of the trial judge, without a separate order, be continued in force pending the appeal.⁷ In others, the statutes require an order of the appellate court to reinstate the dissolved injunction.⁸

Under the North Carolina statute⁹ the trial judge may, at his discretion, continue the original order in force until the appeal is determined; but the injunction does not remain in force unless it is so specified in the order of dissolution.¹⁰ This rule seems better adapted to do equity and to protect the rights of the parties than to have the appellate court handle the matter. At the hearing the trial judge has the facts of the case before him, and he then may ascertain more accurately, more rapidly and less expensively than the appellate court, whether, in order to preserve the *status quo* or to prevent irreparable injury, it is necessary that the injunction remain in force. If, on the other hand, the appeal and posting of a bond were automatically to continue the injunction in force, injustice might result in some cases.

The principal case seems correctly decided, however, under the West Virginia procedure. The mistake of counsel was apparently due to the conflict between the trial courts refusal of a stay and the appellate courts supersedeas.

A. T. ALLEN, JR.

⁵ NEB. COMP. STAT. (1929) §1920 (posting of supersedeas bond continues the injunction in force until the appeal is determined); *State v. Baker*, *supra* note 2; WASH. COMP. STAT. (Remington, 1922) §1723 (where a temporary injunction has been dissolved, the injunction will be continued in force pending the appeal); *State v. Superior Court of King County*, 30 Wash. 197, 70 Pac. 233 (1902).

⁶ TEX. REV. CIV. STAT. (1925) art. 4662; *Bass v. City of Clifton*, 297 S. W. 872 (Tex. Civ. App. 1927).

⁷ S. D. COMP. LAWS (1929) §3160; N. C. CODE ANN. (Michie, 1931) §858 (a).

⁸ FLA. COMP. LAWS (1927) §4662; *Smith v. Whitfield*, *supra* note 4; OHIO CODE (Throckmorton, 1929) §12225 (order of dissolution may not be suspended except by order of the court of appeals); MONT. REV. CODE (Choate, 1921) §8807 (supreme court may continue injunction pending appeal).

⁹ N. C. CODE ANN. (Michie, 1931) §858 (a).

¹⁰ Though there is no direct authority to this effect, this seems to be the correct interpretation, since the appeal itself does not continue the dissolved temporary injunction. *Reyburn v. Sawyer*, *supra* note 3.