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Filed October 2, 1911.

IN THE COURT OF CHANCERY OF THE STATE
OF NEW JERSEY.

10

Between	
SOUTH JERSEY REALTY COMPANY,	} ORDER ON RULE IN CONTEMPT. NOTICE OF APPEAL.
Complainant,	
and	
SAMUEL S. STALEY,	
Defendant.	

The defendant hereby appeals from the order or decree made by the Honorable Mahlon Pitney, Chancellor, as advised by the Honorable James E. Howell, Vice-Chancellor, on the fourth day of October, Nineteen hundred and Ten, adjudging the said defendant to be guilty of contempt of court, alleged in the said order or decree to have been committed by the said defendant by the violation of an injunction recited in said order or decree as theretofore granted, and imposing upon said defendant a fine of fifty dollars for the use of the state and payment to the complainant of the costs of the proceedings and further ordering that the said defendant be imprisoned for a term of three months in the county jail of Camden County, and from the whole and every part of said order or decree, to the Court of Errors and Appeals in the last resort in all causes.

C. RODNEY MAY,
Solicitor of Defendant.

September.

I conceive that there is good cause for appeal in the above-stated cause.

G. DORE COGSWELL,
Of Counsel with Defendant.

10

I, Samuel K. Robbins, Clerk of the Court of Chancery of the State of New Jersey, the same being a Court of Record, do hereby certify that the foregoing is a true copy of the Notice of Appeal from order adjudging Samuel S. Staley guilty of contempt, filed Oct. 2nd, 1911, in a cause wherein South Jersey Realty Co. is complainant and Samuel S. Staley, *et al.*, are defendants now on the files of my office.

20

In testimony whereof I have hereto set my hand and affixed the seal of said Court, at Trenton, this second day of October, A. D. Nineteen hundred and Eleven.

SAML. K. ROBBINS,
Clerk.

Filed October 28, 1911.

RECEIPT OF CLERK IN CHANCERY.

30

Office of Clerk in Chancery, New Jersey,
Trenton, N. J., Oct. 28th, 1911.

Received from C. Rodney May one hundred dollars on appeal, So. Jersey Realty Co. v. Samuel S. Staley.

\$100.00.

SAMUEL K. ROBBINS,
per J. ED. HARROP.

Filed October 28, 1911.

IN THE COURT OF ERRORS AND APPEALS OF
THE STATE OF NEW JERSEY, IN THE
LAST RESORT.

In the Matter of
SAMUEL S. STALEY,
Appellant,
and
SOUTH JERSEY REALTY
COMPANY,
Respondent.

APPEAL FROM THE COURT
OF CHANCERY ON BILL
AND ORDER IN CON- 10
TEMPT.

PETITION FOR APPEAL.

*To the Honorable the Court of Errors and Appeals in
the Last Resort in all Causes:*

The petition of Samuel S. Staley, the appellant in
the above-stated cause, respectfully shows that your 20
petitioner finds himself aggrieved by an order made in
the Court of Chancery by his Honor Mahlon Pitney,
Chancellor of New Jersey, bearing date the fourth day
of October in the year of our Lord one thousand nine
hundred and ten wherein the said South Jersey Realty
Company was complainant, and the said Samuel S.
Staley was defendant, in this respect, to wit: that the
said order adjudges Samuel S. Staley to be guilty of
contempt for having sold to one George S. Signor a
tract of land situate at a point at the southwest cor- 30
ner of Third avenue and Eighty-fourth street at Stone
Harbor, Seven Mile Beach, in the State of New Jersey,
on the third day of August Anno Domini nineteen hun-
dred and ten; and also for having sometime since the
first day of September, Anno Domini nineteen hundred
and ten, offered for sale to one George Collison and
Carrie Collison, his wife, certain lots of land between

- Eighty-third and Ninety-fourth streets at Stone Harbor, New Jersey; and for having offered to sell to other persons unknown, lands situate between Eighty-third and Ninety-fourth streets at Stone Harbor, New Jersey, contrary to and in disobedience and violation of an injunction issued against the said Samuel S. Staley by the Honorable Court of Chancery of New Jersey on or about the sixth day of November Anno Domini nineteen hundred and nine forbidding him,
- 10** the said Staley, from selling or offering for sale the lands aforesaid or from claiming and ownership therein, as alleged in complainant's petition. And the petitioner being adjudged guilty of contempt as aforesaid was ordered to pay to the clerk of the Court of Chancery a fine of fifty dollars for the use of the State, and to the complainant the costs of the proceedings, to be taxed, and as further punishment that your petitioner, the said Samuel S. Staley, be committed to the common jail of the County of Camden, at Camden, in the
- 20** State of New Jersey, and there confined for a period of three months from the date of his commitment, to run concurrently with a similar term of imprisonment imposed in another cause pending in said Court of Chancery between the said parties, and for a further term until he shall have paid said fine and costs, as aforesaid, unless the Chancellor shall see fit sooner to discharge him.

- Your petitioner further represents that the order aforesaid, dated the fourth day of October, Anno
- 30** Domini nineteen hundred and ten, was signed the day after your petitioner, the said Staley, was ordered to show cause why he should not be adjudged guilty of contempt, to wit: the third day of October, nineteen hundred and ten; that petitioner's solicitor, C. Rodney May, appeared before Vice-Chancellor Howell at that time and objected to any proceedings being had in the case, as the solicitor for the complainant had no

witnesses present in court, and your petitioner's solicitor demanded that complainant's witnesses be produced in open court in accordance with the law and practice of the Court of Chancery of New Jersey, which was followed in a previous ruling of the said Vice-Chancellor Howell in a similar case between the said parties; that the said Vice-Chancellor Howell denied the said application of your petitioner's solicitor, and instead of allowing your petitioner to show cause why he should not be punished for contempt as he was ordered to do, the said vice-chancellor adjudged him guilty without a hearing. 10

Petitioner further represents that he was not in court at the time of said order, being a resident of Pennsylvania, but appeared by his solicitor, who was refused a hearing.

And your petitioner humbly appeals from the order of the Chancellor which imposes a penalty of fine and imprisonment, as aforesaid, upon the ground that the same is erroneous, for that it is contrary to law; and for the further reasons following, that is to say: 20

1st. That the latter part of the order which says that the three months' imprisonment ordered, is to run concurrently with a similar term imposed in another cause pending in said court between the said parties is erroneous for that there never was imposed a previous term of imprisonment upon your petitioner, as stated in said order of October fourth, nineteen hundred and ten. 30

2nd. That in the case of a rule to punish for contempt the defendant is entitled to proof of contempt alleged, by competent witnesses as in other cases and to be confronted with the witnesses upon whose testimony he is accused, in order that he may have an opportunity for cross-examination and to produce his

witnesses in court in contradiction thereof, as the contempt is a fact which must be proved as any other fact, and the accused person has the further right to be examined in order that he may purge himself of such contempt, if any be proved.

3rd. That under the New Jersey statute authorizing punishment for contempt by a Vice-Chancellor there can be no sentence of imprisonment for contempt not committed in the presence of the Court.

10

4th. That the act alleged to have been committed by the defendant and which by the order appealed from, it was attempted to punish as a contempt, if it were such, was a civil and not a criminal contempt, as those terms are known and used in the law, and such contempt as that charged in this case is not punishable by imprisonment for a definite term.

20

5th. That without any facts before him the Vice-Chancellor acted as Judge, prosecutor and jury, which is contrary to the chancery practice of New Jersey.

6th. That the enforcement of the said order in contempt would be a deprivation of the rights of your petitioner to the equal protection of the laws, and of his right to be secure against any deprivation of his liberty and property without due process of law, in violation of the rights of your petitioner under the Constitution of the United States, and of the State of New Jersey.

30

7th. That the act complained of, and which the said order assumes to punish as a contempt, was alleged and admitted by the party applying for the order to have been committed outside of the State of New Jersey and of the jurisdiction of the Court.

Your petitioner therefore prays that the said order of the said Chancellor may be reversed, set aside and for nothing holden. And that your petitioner

may have such relief in the premises as to this Honorable Court shall seem meet.

SAMUEL S. STALEY.

C. RODNEY MAY,
Solicitor of Appellant,

G. DORÉ COGGSWELL,
Of Counsel.

Filed Nov. 11, 1911.

10

COURT OF ERRORS & APPEALS, NEW JERSEY.

SOUTH JERSEY REALTY Co.,
Complainant,
v.
SAMUEL S. STALEY, ET AL.,
Defendants.

ANSWER TO PETITION
OF APPEAL.

The answer of South Jersey Realty Co., respondent above named, to the Petition of Appeal of Samuel S. Staley, the above named appellant. 20

This respondent, not acknowledging all or any of the matters which in said Petition of Appeal are contained, to be true, for answer thereto nevertheless, says and admits that an order was, on the fourth day of October, 1910, made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition as is therein stated, but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced. 30

And this respondent is advised and believes that the said order is agreeable to equity and it prays that the same may be affirmed with costs to be adjudged to this respondent.

(Signed) LEWIS STARR,
Solicitor for and of Counsel With Respondent.

Filed Nov. 28, 1911.

NEW JERSEY COURT OF ERRORS AND AP-
PEALS.

10	Between SAMUEL S. STALEY, Appellant, and SOUTH JERSEY REALTY COMPANY, Respondent.	}	ANSWER TO PETITION OF APPEAL.
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The answer of the above named respondent to the petition af appeal of the above named appellant.

20 This respondent not acknowledging all or any of the matter which in said petition of appeal are contained, to be true, for answer thereto notwithstanding say and admit an order was on the fourth day of October, nineteen hundred and ten, made and entered in the Court of Chancery of New Jersey, in the cause for that purpose mentioned in said petition as is therein stated, but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced.

30 And this respondent is advised and believes that the said order is agreeable to equity and it prays that the same may be affirmed with costs to be adjudged to this respondent.

LEWIS STARR,
Solicitor for and of Counsel With Respondent.

Filed Sept. 22, 1910.

PETITION FOR ORDER TO SHOW CAUSE.

IN CHANCERY OF NEW JERSEY.

Between	}	ON BILL, &C. PETITION FOR ATTACHMENT FOR CONTEMPT.	10
SOUTH JERSEY REALTY			
COMPANY,			
Complainant,			
and			
SAMUEL S. STALEY, ET AL.,	}		
Defendants.			

*To the Honorable Mahlon Pitney, Chancellor of the
State of New Jersey:*

The petition of South Jersey Realty Company, the complainant in the above entitled cause, respectfully shows, charges and avers as follows: **20**

1. That your petitioner exhibited its bill of complaint in the above entitled cause against Samuel S. Staley and John Leaming, the defendants named therein, service of process being made upon the defendant John Leaming and an order of publication taken against the said Staley, and served as required by law.

2. That neither of the said defendants filed any plea, answer or demurrer to the bill of complaint and the said bill was duly taken as confessed against all of the said defendants. **30**

3. That on the twenty-second day of October, nineteen hundred and nine, a final decree was entered in said cause against the defendants Staley and Leaming, restraining the said defendants and their and each and every of their agents, servants and attorneys from making any contract or agreement for the sale or other

disposition of any of the lands and premises in said bill of complaint described, belonging to the said complainant, or heretofore sold and conveyed by it, or any part thereof, and from making, executing or delivering any deed or other conveyance therefor, or any part thereof, to any person whomsoever, and from lodging for record or causing to be lodged for record any deed or other conveyance for the same, or any part thereof, and from assuming and taking or entering into possession of said lands and premises or any part thereof, and from advertising the same, or any part thereof for sale, and from claiming, alleging, stating or in any manner or wise holding themselves out to be the owner or owners of said land and premises, or any part thereof, or entitled to any estate, interest or claim therein, and from doing any act or thing which will in any wise disturb the complainant, or its grantees, in the full, complete and absolute possession and ownership of said lands and premises, and every part thereof, and the right to possess, use, occupy and enjoy the same, and every part thereof.

4. That the lands and premises described in said bill of complaint and said final decree are located at Stone Harbor, on Seven Mile Beach, in the Township of Middle, County of Cape May and State of New Jersey, between the south line of Eightieth street and the north line of Ninety-fourth street, extending from the Atlantic Ocean to the Great Channel, reserving and excepting out of the same certain tracts of land sold before your petitioner became the owner thereof.

5. That on or about the sixth day of November, nineteen hundred and nine and pursuant to the authority of said final decree, a writ of injunction was issued under the seal of this court and the hand of Samuel K. Robbins, clerk thereof, which writ, among other things strictly enjoined and commanded the said Sam-

uel S. Staley and John Leaming, their servants, agents and attorneys, and each and every of them, from thence forth and forever to absolutely desist and refrain from making any contract or agreement for the sale or other disposition of any of the lands and premises mentioned in said bill of complaint and described in said final decree belonging to the said complainant, or theretofore sold or conveyed by it, or any part thereof, and from making, executing or delivering any deed or other conveyance therefor, or any part thereof, to any person whomsoever, and from lodging for record or causing to be lodged for record any deed or other conveyance for the same or any part thereof, and from assuming and taking or entering into possession of said lands and premises or any part thereof, and from advertising the same, or any part thereof for sale and from claiming, alleging, stating, or in any manner or wise holding themselves out to be the owner or owners of said lands and premises or any part thereof, or entitled to any estate, interest or claim therein, and from doing any act or thing which will in any wise disturb the complainant, or its grantees in the full, complete and absolute possession and ownership of said lands and premises, and every part thereof, and the right to possess, use, occupy and enjoy the same, and every part thereof.

6. That inserted in said injunction was a particular description of the lands and premises described in said bill of complaint and final decree.

7. That said writ of injunction issued by virtue of the terms of said final decree was duly served as required by law the said Samuel S. Staley, on the twelfth day of November, nineteen hundred and nine, and on the said John Leaming on the same day, as will appear by the writ and affidavit of service thereto annexed on file in said cause.

8. That in violation of the terms of said injunction and final decree the said Staley has since the service thereof repeatedly made attempts to sell the lands of your petitioner at Stone Harbor, located between Eightieth and Ninety-fourth streets, and has repeatedly held himself out to be the owner thereof and entitled to sell and dispose of the same, and offered to make contracts for the sale thereof and deeds therefor.

10
19 nineteen hundred and ten, the said Staley, together with his wife, made, executed and delivered to one George C. Signor, a deed for a tract of land situate at a point at the southwest corner of Third avenue and Eighty-fourth street, at Stone Harbor, Seven Mile Beach, aforesaid, a copy of which deed is hereto attached and forms part hereof and marked Exhibit 1; that said deed was delivered to the said Signor by the said Staley and lodged for record in the office of the Clerk of Cape May County, aforesaid, on the fifth day
20 of August, nineteen hundred and ten, and there recorded in Book No. 249 of Deeds, page 448, &c.

10. That sometime since the first day of September, nineteen hundred and ten, the said Staley stated to George Collison and Carrie L. Collison, his wife, that he owned lots from Eighty-third to Ninety-Fourth streets, in Stone Harbor, New Jersey, and that your petitioner did not own any lots at that place; said Staley then offered to sell lots between Eighty-third
30 and Ninety-fourth streets and subsequently stated to the said George and Carrie Collison that if they would let him (Staley) have one hundred dollars, he would sell him lots anywhere he would select them between Eighty-third and One Hundred and Fourteenth streets, at Stone Harbor aforesaid; all of which will appear by the affidavits of the said George and Carrie Collison, hereto attached and forming part hereof, to which reference is hereby made.

11. That your petitioner believes said Staley has attempted to sell the lands of your petitioner between Eighty-third and Ninety-fourth streets, at Stone Harbor, to other persons since the service of said injunction; that he has to such persons whose names are unknown to your petitioner, made claims of ownership of title in violation of the terms of said injunction.

Your petitioner therefore prays that an order be made adjudging the said Staley guilty of the violation of the final decree and injunction heretofore mentioned and of contempt of the order, decree, power and authority of this Court, and that he should be punished therefor, in accordance with the rules and practice of this honorable Court, and that your petitioner may have such other and further relief, as may be equitable and just. 10

And your petitioner will ever pray, &c.

LEWIS STARR,

*Solicitor for and of Counsel
with Petitioner.*

20

STATE OF NEW JERSEY, }
COUNTY OF CAMDEN, } ss.:

David Risley, being duly sworn according to law, on his oath says: I am the treasurer of the South Jersey Realty Company, the complainant named in the foregoing petition, and its duly authorized agent in this behalf; I have read said petition and know the contents thereof; that the matters and things therein set forth, so far as they relate to the acts and deeds of petitioner are true, and so far as they relate to the acts and deeds of others I believe them to be true. 30

Sworn and subscribed before
me this twenty-first day of } DAVID RISLEY.
September, 1910.

JOSHUA E. BORTON,
M. C. C. of N. J.

CITY AND COUNTY OF PHILADELPHIA, } ss.:
STATE OF NEW JERSEY,

George Collison, being duly sworn according to law, deposes and says: I am a dentist residing at 1307 N. 52nd street, Philadelphia, Pa. About August 24th, 1910, I purchased of South Jersey Realty Company one thousand dollars (\$1,000) par value of its Ocean Parkway Construction Bonds with accompanying lot No. 184, in Block No. 95, Stone Harbor, and was perfectly satisfied with my investment at that time. About ten days or more ago, but after I had made the above purchase, one Samuel S. Staley called upon me at my residence and stated that he owned lots from Eighty-third to Ninety-fourth street, in Stone Harbor, and the South Jersey Realty Company did not own them. He offered to sell me lots between Eighty-third and Ninety-fourth street, in Stone Harbor, New Jersey. He also said lots between Ninety-fourth street and One Hundred and Fourteenth street, Stone Harbor, were more desirable in the end and he would sell me lots anywhere from Eighty-third street to One Hundred and Fourteenth street, Stone Harbor. He called upon me again on Friday evening, September 9th, 1910, and said if I would let him have (\$100) one hundred dollars he would make my hair stand on end and would sell me lots anywhere that I would select them between Eighty-third street and One Hundred and Fourteenth street, Stone Harbor, New Jersey.

30 Sworn and subscribed to be- }
fore me this twelfth day } GEORGE COLLISON.
of September, A. D. 1910. }

CHARLES A. FARNUM,
*A Foreign Commissioner of Deeds for
the State of New Jersey in Penn-
sylvania, residing in the City of
Philadelphia, Pennsylvania.*

(Seal)

CITY AND COUNTY OF PHILADELPHIA, } ss.:
STATE OF PENNSYLVANIA,

Carrie Collison, being duly sworn according to law, deposes and says: I am the wife of George Collison and I reside at 1307 N. 52nd street, Philadelphia, Pa. About ten days ago one Samuel S. Staley called upon my husband at our residence and stated that he owned lots from Eighty-third street to Ninety-fourth street, in Stone Harbor, New Jersey, and the South Jersey Realty Company did not own them. He offered to sell us lots between Eighty-third street and Ninety-fourth street, in Stone Harbor, New Jersey. He also said lots between Ninety-fourth street and One Hundred and Fourteenth street, Stone Harbor, were more desirable in the end and he would sell us lots anywhere from Eighty-third street to One Hundred and Fourteenth street, Stone Harbor. He called upon us again Friday evening, September 9th, 1910, and said if my husband would let him have one hundred dollars (\$100) he (Staley) would make my husband's hair stand on end and he (Staley) would sell my husband lots anywhere that my husband would select them between Eighty-third street and One Hundred and Fourteenth street, Stone Harbor. 10 20

Sworn and subscribed to before me this twelfth day of September, A. D. 1910. } CARRIE L. COLLISON.

CHARLES A. FARNUM,
*A Foreign Commissioner of Deeds for
the State of New Jersey in Penn-
sylvania, residing in the City of
Philadelphia, Pennsylvania.*

(Seal)

EXHIBIT 1.

THIS INDENTURE, made the third day of August in the year of our Lord one thousand nine hundred and ten, between SAMUEL S. STALEY, and his wife, Carrie L., of the City of Philadelphia, County of Philadelphia and State of Pennsylvania, of the first part, and GEORGE C. SIGNOR, of the same City and State, of the second part, WITNESSETH, That the said party of the first part, for
10 and in consideration of the sum of One (1) Dollar and other valuable consideration, lawful money of the United States of America, well and truly paid by the said party of the second part to the said party of the first part, at and before the ensealing and delivering of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, release, convey and confirm unto the said party of the
20 second part, his heirs and assigns, ALL that certain parcel of land and premises, situate in the Borough of Stone Harbor, Seven Mile Beach, Cape May County, New Jersey, BEGINNING at a point at the southwest corner of Third avenue and 84th street and extending along the South West line of along said 84th street, Northwesterly 600 feet, more or less, to the low water mark of the Great Channel, thence along the said low water mark of the Great Channel, Southwesterly 90 feet, thence along the North East line of the South Basin
30 and parallel to 84th Street, 500 feet more or less, to a point. Thence Southwestwardly to a point; thence Southeastwardly to a point 135 feet from the Southwest line of 84th Street and parallel thereto in a Southeasterly direction 110 feet to the Northwest line of 3rd Avenue, thence along the West line of 3rd Avenue 135 feet to the place of beginning, being lot No. 168 and also Lots Nos. 110, 112, 114, 116, 118, 120, 122, 124, 126,

128, 130, 132, 134 136, 138, 140, 142, 144, 146, 148, 150, 152 and 154 in Block 84D, according to a map or plan drawn by William D. Yarnall and on file in the Clerk's office at Cape May County, New Jersey. Being a portion of the land and premises which John Leaming and others by indenture bearing date April 13th, A. D. 1908, granted and conveyed to the said Samuel S. Staley, in fee, and recorded in the Clerk's office at Cape May County, State of New Jersey, in Book No. 230 of Deeds, pages 279, etc. Together with all and singular, the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances, to the same belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and the profits thereof, and of every part and parcel thereof; AND ALSO all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity of the said party of the first part, of, in and to the said premises with the appurtenances; TO HAVE AND TO HOLD the said premises with all and singular the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use benefit and behoof of the said party of the second part, his heirs and assigns forever. AND the said party of the first part, their heirs, executors and administrators, doth by these presents covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that they the said party of the first part their heirs, all and singular the hereditaments and premises herein above described and granted, or mentioned and intended to be so, with the appurtenances, unto the said party of the second part, his heirs and assigns, against them the said party of the first part, their heirs, and against all and every other person or persons whomsoever lawfully claiming or to claim the same, or any part thereof, Shall and

Will Warrant and forever Defend. IN WITNESS WHEREOF the said party of the first part to these presents have hereunto set their hands and seals. Dated the day and year first above written.

Signed, Sealed and
Delivered in the presence of Philip Schmitz. } SAMUEL S. STALEY. (LS)
CARRIE L. STALEY. (LS)

10

STATE OF NEW JERSEY, } ss.:
CAMDEN COUNTY,

20 Be it remembered that on this third day of August, in the year of our Lord one thousand nine hundred and ten, before me, a Commissioner of Deeds of New Jersey, personally appeared Samuel S. Staley and Carrie L. Staley, his wife, who, I am satisfied are the grantors mentioned in the above deed or conveyance, and I having first made known to them the contents thereof they acknowledged that they signed, sealed and delivered the same as voluntary act and deed; and the said Carrie L. Staley being of full age, on a private examination apart from her said husband, before me acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of her said husband. All of which is hereby certified.

30

PHILIP SCHMITZ,
Commissioner of Deeds of New Jersey.

Received and recorded this deed Aug. 5th, A. D. 1910, at 8 A. M.

A. C. HILDRETH,
Clerk.

STATE OF NEW JERSEY, }
CAPE MAY COUNTY, } ss.:

I, A. C. Hildreth, County Clerk and Clerk of the Court of Common Pleas in and for said County, do hereby certify that the foregoing is a true and correct copy of the Deed, Samuel S. Staley, *et ux.*, to George C. Signor, as the same appears of record in my office in Deed Book No. 249, page 448, etc.

In Witness Whereof, I have hereunto set my
hand and affixed the seal of said Court 10
(Seal) this fourteenth day of September, A. D.
1910.

A. C. HILDRETH,
Clerk.

Filed Oct. 3, 1910.

AFFIDAVIT OF SERVICE.

IN CHANCERY OF NEW JERSEY.

A copy of the foregoing petition was returned 20
with the following affidavit of service:

Between
SOUTH JERSEY REALTY
COMPANY,
Complainant,
and
SAMUEL S. STALEY, ET AL.,
Defendants. }

30

STATE OF NEW JERSEY, }
COUNTY OF CAMDEN, } ss.:

Fred Voigt, being duly sworn according to law, on his oath says: that on the twenty-fourth day of September, nineteen hundred and ten, I served upon Saml. S. Staley, one of the defendants above named,

true but uncertified copies of a petition for attachment for contempt filed in the above entitled cause, on the twenty-second day of September, 1910, and an order to show cause allowed thereon, dated the 22d day of September, 1910, by handing the same to said Staley personally at his place of residence, 5729 Commerce street, in the City of Philadelphia, and informing him of the contents thereof; that attached hereto and forming part hereof are true copies of the petition and order served as above stated.

10

Sworn and subscribed before
me this 24th day of September, 1910. }

FRED VOIGT.

JOHN G. HORNER,
M. C. C. of N. J.

Filed Sept. 22, 1910.

ORDER TO SHOW CAUSE.

20

IN CHANCERY OF NEW JERSEY.

Between
SOUTH JERSEY REALTY
COMPANY,
Complainant,
and
SAMUEL S. STALEY, ET AL.,
Defendants. }

ORDER TO SHOW CAUSE.
ON PETITION, &C.

30

This matter being opened to the Court and after reading and filing the petition of the complainant, together with the affidavits attached thereto, filed therein, and sufficient cause appearing therefor:

It is on this twenty-second day of September, nineteen hundred and ten, on motion of Lewis Starr,

solicitor of the complainant, ordered that the defendant, Samuel S. Staley show cause before the Chancellor, at the Chancery Chambers in the City of Jersey City, on Monday, the third day of October, nineteen hundred and ten, at ten o'clock in the forenoon, why he should not be adjudged to be guilty of contempt of court in the violation of the terms of the permanent injunction granted against him in the above entitled cause and be punished accordingly.

And it is further ordered that a copy of said petition and affidavits attached thereto and of this order, which copies may be uncertified, be served upon the defendant, Samuel S. Staley, either within or without this State, within five days from the date hereof. 10

MAHLON PITNEY,
C.

Respectfully advised.

JAMES E. HOWELL,
V. C.

Filed Oct. 5, 1910. 20

ORDER ADJUDGING APPELLANT GUILTY OF
CONTEMPT.

IN CHANCERY OF NEW JERSEY.

Between	}	ON BILL, &C.	}	
SOUTH JERSEY REALTY COMPANY,		ORDER ADJUDGING		
Complt.,		SAMUEL S. STALEY		30
and		GUILTY OF CON-		
SAMUEL S. STALEY, <i>et al.</i> ,	}	TEMPT.	}	
Defts.				

It appearing to the Chancellor that upon petition filed by the complainant in the above entitled cause, an order was entered, dated twenty-second day of

September, nineteen hundred and ten, requiring the defendant, Samuel S. Staley, to show cause before the Chancellor, at the Chancery Chambers in the City of Jersey City, on Monday, the third day of October, nineteen hundred and ten, at ten o'clock in the forenoon, why he should not be adjudged guilty of contempt of court, in violation of the terms of the permanent injunction granted against him in the above entitled cause and be punished accordingly.

- 10 And it further appearing by affidavits that copies of said petition and order were duly served personally upon the said Staley, as required by the terms of said order.

- And the Court after considering the said petition and the affidavits attached thereto, being of opinion that the said defendant, Staley, did commit the contempt with which he is charged and violated the terms of the injunction aforesaid, and that his conduct was calculated to impair, defeat and prejudice the rights of the complainant in this cause and was an affront to the dignity and power of this Court.
- 20

It is thereupon on this fourth day of October, nineteen hundred and ten, on motion of Lewis Starr, solicitor of the complainant, ordered that the said Samuel S. Staley be and he is hereby adjudged to be guilty of contempt by reason of the misconduct alleged in said petition, and that he pay to the Clerk of this Court a fine of fifty dollars for the use of the State, and that he pay to the complainant the costs of these proceedings

- 30 to be taxed.

And it is also ordered that as further punishment for his said conduct, that the said Samuel S. Staley be committed to the common jail of the County of Camden, at Camden, in this State, and there confined for a period of three months from the date of his commitment, to run concurrently with a similar term of imprisonment imposed in another cause pending in this

Court between the parties hereto by order, dated this day, and for a further term until he shall have paid said fine and costs, as aforesaid, unless the Chancellor shall see fit sooner to discharge him.

And it is further ordered that a warrant issue accordingly, directed to any sheriff, constable or other peace officer of the State of New Jersey.

MAHLON PITNEY,
C.

Respectfully advised,

JAMES E. HOWELL,

V. C.

A true copy.

SAML. K. ROBBINS,

Clerk.

10

STATEMENT OF PROCEEDINGS BEFORE VICE-
CHANCELLOR HOWELL ON MAY 3, 1910, BY
C. R. MAY, ESQ., SOLICITOR FOR DEFEND-
ANT (S. S. STALEY).

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IN THE COURT OF ERRORS AND APPEALS OF THE STATE OF
NEW JERSEY, IN THE LAST RESORT.

In the Matter of	}	Appeal from the Court of Chancery on Bill and Order in Contempt.	
SAMUEL S. STALEY, Appellant,			
and	}	Petition for Appeal.	30
SOUTH JERSEY REALTY COMPANY, Respondent.		Affidavit of C. Rodney May, Esquire.	

C. Rodney May, being duly sworn according to law, deposes and says:

On the twenty-sixth day of April, A. D. 1910, I appeared in the Chancery Chambers in Jersey City, New Jersey, as solicitor for Samuel S. Staley who had been ordered to appear there on said date and show cause why he should not be punished for contempt for violating, as alleged in affidavits filed by the South Jersey Realty Company, an injunction forbidding him to sell or offer for sale certain lands on Seven Mile Beach, New Jersey. As it was proposed to try Mr. Staley on affidavit without having the accusing witnesses present in court, I objected to this method of procedure and applied to have witnesses produced in open court, that they might be cross-examined according to law, and cited in support of my contention the case of *Seastream v. New Jersey Exhibition Company*, 69 N. J. Eq. R. and other cases. Whereupon the Honorable James E. Howell, Vice Chancellor, who was presiding at the time, ordered that the defendant, Staley, should file affidavits in his defense on or before May 5th, 1910, and that the case should be tried in open court in Camden, on May 18th, 1910, and that witnesses for both the complainant and the defendant should then and there be produced to testify and to be cross-examined. In accordance with said order the trial took place with witnesses present as ordered. No decree or order was made at the conclusion of the case, but about a month afterwards, to wit, on June 18th, 1910, an order was made adjudging the said Staley guilty of contempt and imposing a fine of Fifty Dollars and costs on him, he to be committed to the County jail of Camden County, until the said fine and costs should have been paid.

The said Samuel S. Staley was not present when said decree or order was made, nor, as deponent is informed and believes, was such decree or order made in open court.

On October 3rd, 1910, said Samuel S. Staley was

again ordered to show cause on that day why he should not be punished for contempt. Arriving in the Chancery Chambers at Jersey City where Staley had been ordered to appear, I met Judge Starr, solicitor for the South Jersey Realty Company, the complainant in said suit and was asked by him if I was ready to try the Staley case. Relying upon the ruling previously made by the Honorable James E. Howell, Vice Chancellor, in a similar case between the same parties, I told him I would not try it unless he brought his witnesses into court to testify. As he had not done so he addressed the Court saying that as he did not have his witnesses in court, he could not, by reason of the previous ruling of the Court, try his case at that time. I also objected to any trial unless the complainant's witnesses were produced in open court, and made application that they be so produced. This application was overruled and Staley was adjudged guilty without a hearing. Staley was not present in court when the decree or order was pronounced, but he was ordered to pay a fine of Fifty Dollars for the use of the State and to pay the complainant the costs of the suit to be taxed, and for a further punishment that he, the said Staley, be committed to the common jail of the County of Camden and there confined for a period of three months from the date of his commitment to run concurrently with a similar term of imprisonment imposed in another cause pending in the same court between the same parties, and for a further term until he shall have paid the fines and costs aforesaid.

Now the said Staley never had a previous term of imprisonment imposed upon him as alleged in the order of October 4th, 1910.

On July 17th, 1910, in company with Mr. W. B. Stewart, of Merchantville, New Jersey (Clerk of that borough), I called upon Vice Chancellor Howell, at his office in Newark, New Jersey, and asked for a copy of

the minutes or proceedings had in his court on October 3rd, 1910, pertaining to the Staley matter. He said he would have to see his stenographer about that as the stenographer kept all the records, but that he would attend to it and send me a record or minutes in a day or two. Not hearing from him for a week I wrote him a letter under date of July 24th, 1911, of which the following is a copy:

"Camden, N. J., July 24th, 1911.

10 Hon. James E. Howell,
 Vice Chancellor.

Dear Sir:

Referring to my call upon you on July 17th, 1911, along with Mr. Stewart for a certified copy of the minutes appertaining to the S. S. Staley case of Oct. 4th, 1910, and your promise to send it to me within the next day or two, I beg to state that as yet I have not heard anything in relation to it and the need of it is holding me up on important business; I therefore ask that you immediately have your stenographer forward the same and oblige,

20

Yours truly,

C. Rodney May"

No reply having been received deponent mailed the second letter of which the following is a copy:

"Camden, N. J., July 29th, 1911.

Hon. James E. Howell,
 Vice Chancellor.

30

Dear Sir:

Supplementing my note of July 24th, 1911, referring to my call at your office, No. 40 Clinton St., Newark, N. J., on July 17th, 1911, and your promise to send to me in the next day or two a copy of the minutes pertaining to the S. S. Staley case of Oct. 4th, 1910, that came before you, I beg to advise that as yet I am not in receipt of the

information required and do not understand the reason of delay as I offered at the time to pay the charges; if however this is the reason for delay if you will on receipt of this letter have your Stenographer send me a bill covering the cost of a certified copy I will immediately forward the amount as I am losing valuable time in a very important matter.

Please advise.

Very truly yours,

C. Rodney May." 10

To which letter the following reply was received from the stenographer or clerk of the Vice Chancellor:

"Newark, N. J., July 31, 1911.

C. Rodney May, Esq.,
Camden, N. J.

Dear Sir:

I have made most diligent search and cannot find any notes of 1910 of any Staley case. That cannot be the name of the case or I could put my hands on the notes. I have gone over all my notes twice and spent two hours in the search and fail to find what you seem to want. 20

Yours truly,
J. R. Salmon."

To which letter the following reply was mailed by deponent:

"Camden, N. J., August 1st, 1911.

Mr. J. R. Salmon, 30
Stenographer to James E. Howell,
Vice Chancellor,
40 Clinton St.,
Newark, N. J.

Dear Sir:

I beg to acknowledge receipt of your letter of July 31st, 1911, advising me that after most dili-

gent search you cannot find any notes in the S. S. Staley case.

The case was between the South Jersey Realty Company, Complainant, and Samuel S. Staley, *et al.*, Defendants.

On the 4th day of Oct., 1910, a decree was made by Vice Chancellor Howell adjudging Samuel S. Staley of being guilty of contempt and ordering him to pay a fine of \$50.00 and costs and that he be further committed to the Common Jail of Camden County for a period of three months, etc.

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This was advised and signed by James E. Howell, Vice Chancellor, and signed by Mahlon Pitney, Chancellor, and the copy before me certified to be a true copy by Samuel K. Robbins, Clerk.

Can it be possible that so important a matter as this does not appear in your minutes and that you have no record of the same or can it be a mistake and is it possible that no such Decree was ever made.

Please advise me of the exact situation to aid me in determining my future course, and greatly oblige,

20

Very truly yours,

C. Rodney May."

And deponent then received the following:

"Newark, N. J., Aug. 2, 1911.

C. Rodney May, Esq.,

My Dear Sir:

I have nothing whatever to do with keeping
 or the Chancellor and don't know anything
 about any decree signed in any case, unless I just
 happen to hear of them. My duty is to take short-
 hand records of the testimony in all cases where
 oral testimony is given before the court of which
 I am the stenographer. After further diligent
 search I have found notes under date of June 7,
 1909, of the case of South Jersey Realty Company
v. Samuel S. Staley, *et als.* Perhaps this is what
 you want. You only gave me the name Staley
 and I might have searched indefinitely for your
 case under that name and not found it. You will

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*If decree signed
 by Chancellor,*

please advise me whether this is what you want. I don't seem to be able to find any notes taken last year in this case.

Yours truly,

J. R. Salmon."

Deponent then addressed the following letter to the Vice Chancellor and duly mailed the same:

"Camden, N. J., August 12th, 1911.

Hon. James E. Howell,
Vice Chancellor.

10

Dear Sir:

Upon my arrival in the Chancery Chamber in Jersey City on Oct. 3, 1910, representing Samuel S. Staley who was ordered to appear on that date and show cause why he should not be punished for contempt, I was met by Judge Starr, Solicitor for the South Jersey Realty Company, and was asked by him if I was ready to try the Staley case. I told him I would not try it unless he brought his witness or witnesses into court to testify. As he had not done that he addressed you saying that as he did not have his witnesses in Court, he could not by reason of a previous ruling of yours try his case at that time. I, also, objected to any trial without the complainant's witnesses were produced in open court, and made application that they be so produced. This application was overruled by you and Staley was adjudged guilty without a hearing.

20

In the Law Courts where it is desired to provide for an appeal from any ruling of the court a bill of exception is taken, but in Chancery practice we must rely upon the minutes or record of the Court which are presumed to show all proceedings had in a case. For the purpose of obtaining a record of your ruling in the Staley case of October 3, 1910, I called on you in company with Mr. Stewart, and also corresponded with your stenographer to whom you referred the matter, but to

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my surprise was informed that there was no record whatever of the proceedings had at that time.

10 In your decree rendered June 18, 1910, in a previous case against Staley, you set forth fully that application was made to you in open court that the witness for the complainant and the defendant be produced and their testimony taken in open court, and it was so ordered by you, as will appear by copy of your decree of that date here inclosed. But in your decree against Staley of Oct. 4, 1910, there is no reference whatever to my application to have witnesses produced in open court, neither is there any record to that effect kept by your Stenographer.

As it is necessary for me to have this application of mine and its denial appear of record, in order to have this point of law passed upon by another tribunal, and as by some inadvertence no record of the same has been kept, can you not so revise your decree of Oct. 4, as to state the fact of my application and its overruling, or add some supplemental clause which will supply the omission?

20 Hoping that you may see your way in some manner to rectify this omission,

I am,

Very truly yours,

C. Rodney May."

And to this letter the Vice Chancellor sent the following reply:

"Hot Springs, Va., 17 August, 1911.

30 C. Rodney May, Esq.,
Camden, N. J.

My dear Colonel:

I have your letter of Aug. 12th *in re* case of South Jersey Realty Company *v.* Staley. If you desire to take an appeal from my decree in that case, I will facilitate you as much as possible. I am surprised that there should be no record of the

proceedings; it will be possible, however, to make up a state of the case for an appeal, and I will see that it is properly settled according to my recollection of what took place. Nobody is more ready to aid in correcting a mistake than I am.

Yours very truly,

James E. Howell."

And deponent further saith that after the hearing of the rule in contempt first hereinbefore mentioned and before any order thereon had been made or filed, deponent received from Lewis Starr, Esquire, solicitor for the complainant in said proceedings, a letter enclosing a copy of a letter stated to have been received by him from the Honorable James E. Howell, Vice Chancellor, referring to the said proceedings, of which letter and enclosure the following are copies: 10

"Camden, N. J., June 15, 1910.

C. Rodney May, Esq.,
Camden, N. J.

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Dear Colonel:

Herewith I send you a copy of letter which I received from Vice Chancellor Howell.

Very truly yours,

Lewis Starr."

Dict. S-S

(Enclosure)

"Newark, N. J., June 14, 1910. 30

Lewis Starr, Esq.,
Camden, N. J.

Dear Sir:

I have examined the papers in the Staley matter and have come to the conclusion that the defendant Staley is guilty of a violation of the injunction. I will

say for his benefit in the future that any assertion on his part, either on behalf of himself or of Mr. John Leaming, that either of them have any sort of a title to the premises in question is a violation of the terms of the injunction, for which they may be punished. I do not think that either of the defendants to this suit has appreciated the fact that he may not claim any sort of title to these lands, and it is in view of that fact that I will make the punishment in the present case lighter than I otherwise would.

I find the defendant guilty as charged. I will advise an order imposing upon him a fine of fifty dollars and the costs of the proceeding, and directing that a writ of commitment shall issue to the sheriff of the proper county by virtue of which he shall be committed to the common jail of that county until the fine and costs are paid.

This is intended as a warning to Mr. Staley, and with it I express the hope that he will not be arrogant enough to again cause his appearance before me in this matter.

Will you kindly send a copy of this letter to Col. May?

Yours truly,

James E. Howell."

And the said letter and enclosure are herein set forth as pertinent to and closely bearing upon the action of the Vice Chancellor in the proceedings and order upon the second rule in contempt hereinbefore set forth and as having relation to the appeal taken thereupon.

And deponent says that the facts above set forth are true and that the copies of letters and papers set forth herein are correct.

Sworn and subscribed this }
29th day of September, } C. RODNEY MAY.
A. D. 1911, before me. }

PHILIP SCHMITZ,
(Seal) Notary Public for New Jersey.

STATEMENT OF C. R. MAY, ESQ., SOLICITOR
FOR S. S. STALEY AS TO OCCURRENCES ON
MAY 7, 1912, ON APPEARANCES BEFORE
VICE-CHANCELLOR HOWELL TO SETTLE
RECORD OF OCTOBER 3, 1910.

On May 7, 1912, I appeared in the Chancery Chambers at Newark, New Jersey, before Vice-Chancellor Howell, in accordance with an arrangement made with Judge Starr, solicitor for the South Jersey Realty Company to appear on that day and be heard in reference to making up a record on what occurred before Vice-Chancellor Howell on October 3, 1910, in the case of the South Jersey Realty Company *v.* Samuel S. Staley, who was summoned to appear on that day to show cause why he should not be adjudged guilty of contempt for violating an injunction previously issued by the said Vice-Chancellor forbidding the said Staley from selling or attempting to sell certain lands at Stone Harbor, New Jersey, or on Seven Mile Beach. Accordingly deponent appeared on the day appointed, but Judge Starr did not appear; but in lieu thereof he had sent a written statement to Vice-Chancellor Howell giving his version of what took place at that time; and, among other things, stating that there were two cases against Staley heard at that time. Vice-Chancellor Howell, addressing me, said that he had received Judge Starr's statement and that Mr. Starr was mistaken in saying that there were two cases heard at that time, for as a matter of fact there was only one case before him and passed upon. Deponent as solicitor for Staley, stated to the Court that that was correct, as there was only one case before the Court and passed upon on October 3, 1910. Deponent then handed to the Vice-Chancellor his previous affidavit of September 29, 1911, setting forth his version of what occurred on October 3, 1910, in the Staley case, and which affidavit appears herewith.

Vice-Chancellor Howell then said he would make up the record in accordance with his knowledge and recollection of the case, and he did and mailed to me from Newark, on May 23, 1912, a statement which appears herewith.

STATEMENT OF RECORD BY LEWIS STARR,
ESQ., SOLICITOR FOR COMPLAINANT.

10

May 6, 1912.

Hon. James E. Howell,
Newark, N. J.

Dear Vice Chancellor:

Colonel May has requested me to appear before you tomorrow in order to settle the facts surrounding the adjudications of contempt of his client Staley in the proceedings. I told him last week that I would gladly arrange to go to Newark if my engagements **20** in the Camden Circuit did not prevent. On returning from Atlantic City a moment ago, where I had a motion before Vice Chancellor Leaming, I find that a jury case in which I represent a defendant will be tried the first thing tomorrow morning. I do not wish to delay Colonel May any longer in relation to his application, and will therefore state to you the incidents of the hearing as I recall them.

Two petitions were filed against Staley, alleging that he had violated the terms of injunctions allowed **30** in two proceedings pending against him in the Court of Chancery. The first is Docket 30-638, in which a final decree was entered April 2, 1909; the second is Docket entry 31-346, in which a decree was entered against him October 22, 1909. The former of these decrees referred to land on the Seven Mile Beach. South of Ninety-fourth Street; and the latter of them

referred to lands between Eightieth and Ninety-fourth Streets.

In the first suit, Staley was adjudged guilty of contempt of the violation of the decree; and on June 18, 1910, he was fined Fifty Dollars and costs. This hearing, if you will recall, occurred in Camden, at which witnesses were examined on behalf of the complainant and Staley was permitted to testify for himself.

Subsequently, the complainant presented petitions showing violations in both cases. Orders to show cause were made in each, returnable at the same time, and service of the petition and orders to show cause was made upon Staley personally, as appears by affidavits on file. These orders were returnable October 3, 1910. 10

On the return day, I had sent from the Chancery Office all of the files and papers in both cases, in order that they might be used by Your Honor in disposing of the questions raised by the petitions.

I produced to Your Honor affidavits showing the service of the petition and orders to show cause, and stated that I was ready to proceed with the hearing of the matter. Colonel May stated to Your Honor that he represented the defendant Staley, and desired to have a hearing in open court, at which witnesses on behalf of the complainant and respondent could be examined. Your Honor then asked him if Staley was in court in response to orders to show cause, to which Colonel May responded that he was not. Your Honor then asked Colonel May where his client was, and the Colonel replied that he supposed he was in Philadelphia, where he lived. 20 30

Your Honor then examined the petition, and finding that Staley had been adjudged guilty in one of the cases and fined Fifty Dollars, inquired of Colonel May if the fine and costs had been paid or if Staley had

come into the State since the order of adjudication, to which Colonel May replied that he did not know whether he had been in New Jersey, but that he had not paid the fine because he could not raise the money. Your Honor then replied that Staley was not entitled to be heard to make application in the cases until he had purged himself of the contempt and had paid the fine and costs imposed. Colonel May immediately replied that his client could not raise the money to pay
 10 the fine and thought that he should be entitled to a hearing at which witnesses could be examined without complying with the previous order of the Court.

Your Honor then denied his application for hearing and asked me what my motion was. I replied that, on the petitions and attached affidavits filed and the records of the cases which were then in court for examination, I thought there should be an adjudication for contempt, to which Your Honor assented, and told me to draw orders to that effect.

20 The foregoing statement is the best of my recollection of what occurred. Subsequently, Colonel May took an appeal from one order without designating which, and it was filed by the Clerk in the case first begun (30-638).

If Your Honor desires to have copies of the petition and orders to show cause upon which the adjudications were made, I will send them to you.

Very truly yours,

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STATEMENT OF THE RECORD BY VICE-
CHANCELLOR HOWELL.

Between	}	IN CHANCERY OF NEW JERSEY.
SOUTH JERSEY REALTY		
COMPANY,		
Complainant.		
and		
SAMUEL S. STALEY,	}	10
<i>et als.,</i>		
Defendants.		

On motion for attachment for contempt.
MR. LEWIS STARR for the motion.
MR. C. RODNEY MAY for the respondent.

FINDING OF FACT AND LAW.

HOWELL, V. C.

Upwards of a year and a half ago I advised an order adjudicating the respondent Samuel S. Staley guilty of contempt of this Court in violating an injunction. An appeal has been taken from the order, and I am now asked to settle a state of the case upon which that appeal may be based. The original bill was filed for the purpose of settling the title to a tract of land on Long Beach. The respondent Staley was one of the defendants to that suit. He filed no answer and made no contest, and a final decree was entered which provided for the issuing of an injunction, and in pursuance of which an injunction was issued enjoining the said Samuel S. Staley and the other defendants to absolutely desist and refrain from making any contract for the sale or other disposition of any of the land and premises situate south of Ninety-fourth street

on Seven Mile Beach described in the bill, and from making, executing or delivering any deed or deeds therefor, or for any part thereof, to any person or persons whomsoever, and from lodging for record or causing to be lodged for record or recorded any deed, mortgage or other conveyance for the same, or any part thereof, and from assuming, taking, or entering into possession of said lands and premises, or any part thereof, and from advertising the same or any part thereof for sale, and from claiming, alleging, stating or in any manner or otherwise holding themselves out to be the owner or owners of said lands and premises or any part thereof, or entitled to any interest, estate or claim therein, and from doing any act or thing which would in any wise disturb the complainant in the full, complete and absolute possession and ownership of said lands and premises or any part thereof, or embarrass or interfere with the complainant in the right to possess, use, occupy and enjoy the same and every part thereof.

The injunction appears to have been served upon the respondent Staley, and it further appears that he violated its terms, and that on June 18, 1910, an order was entered adjudging him guilty of the contempt alleged, and ordering him to pay to the State a fine of fifty dollars and the complainant's costs, and that he be committed to the county jail of the county of Camden, there to remain until he should have purged himself of the contempt.

The records show that the writ of commitment was issued, but that the respondent Staley could not be found in the county of Camden, and that the writ was never executed on him. Subsequently, and while he was unpurged of his former contempt, the respondent Staley further violated the injunction by representing that he owned the lands mentioned in the injunction, and by offering to sell the same.

An order to show cause was signed and served upon the respondent Staley, who was then sojourning in Philadelphia. He did not appear at the hearing on the return day, but sent his counsel, who moved that a day might be fixed for taking the deposition of the respondent, who counsel represented desired to have a hearing in open court. He presented no answering affidavits. His counsel was inquired of as to whether Staley was in court in response to the order to show cause, to which counsel replied that he was not. His counsel stated that he was in Philadelphia, where he lived. I then examined the petition, and finding that the respondent Staley had been adjudged guilty of contempt on a former action, and had been fined fifty dollars, inquired of his counsel if the fine and costs had been paid, to which his counsel replied that Staley had not paid the fine because he could not raise the money, but that he thought that Staley should be entitled to a hearing without having complied with the previous order of the Court. Counsel for the complainant then moved that the order be made absolute, and this was done. 10 20

As to the law of the case, it is thoroughly well settled that a Court will not listen to the complaint of a person who is already under conviction for contempt, and not until he shall have purged himself of the contempt and submitted himself personally to the jurisdiction of the Court. It is perfectly safe for Mr. Staley to contest the contempt decree in this cause as long as he stays without the limits of the State of New Jersey. If his position is right, he may continue to live in Philadelphia and to violate the injunction by offering the property in question for sale in that city, and so slander the title of the complainant and violate the decree, and still defend against proceedings taken to punish him for his contempt and to appeal from decrees made in relation thereto, and at a safe distance trifle and 30

experiment with this Court, which will then have no method of enforcing its decree. The general rule is that parties must clear their contempt before they can be heard in the same cause. *Vowels v. Young*, 9 Ves. 138. Certainly the Court would not stay its hand on this application at the request of a defendant who is already under the Court's condemnation for violating the same writ, without a word of explanation and without submitting himself personally to the jurisdiction of the Court, but withholding himself therefrom to avoid the consequences of his former similar action.

The authorities in this State on this subject are: *Endicott v. Mathis*, 1 Stock. 110; *State v. Ackerson*, 1 Dutch. 209; *Freese v. Swayze*, 11 C. E. Gr. 437.

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30

New Jersey Court of Errors and Appeals

NOTICE.

Between

South Jersey Realty
Company,

Complainant-Respondent,
and

Samuel S. Staley,

Defendant-Appellant.

10

On Appeal, &c.
Notice.

Lawrence B. Reader, Esquire, Solicitor of Ap-
pellant.

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Dear Sir:

Take notice that, when the above cause is argued before the above-named Court, at the March term of said court, of nineteen hundred and fourteen, I will present to said Court the affidavit with the exhibits, which are attached hereto and form part hereof, for the purpose of furnishing information to the Court as to the conduct of the said appellant since the making of the order appealed from in this cause, in order that such action may be taken thereon as may be justified under the circumstances.

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Your obedient servant,

LEWIS STARR,
*Solicitor of Complainant-
Respondent.*

Dated Febuary 4, 1914.

AFFIDAVIT.NEW JERSEY
COURT OF ERRORS AND APPEALS.

10	BETWEEN SOUTH JERSEY REALTY COMPANY, <i>Complainant-Respondent,</i> AND SAMUEL S. STALEY, <i>Defendant-Appellant.</i>	}	ON APPEAL. AFFIDAVIT.
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20	STATE OF NEW JERSEY, COUNTY OF CAMDEN,	}	ss.:
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HOWARD S. RISLEY, of full age, being duly sworn according to law, on his oath says, I am the president of the South Jersey Realty Company, the complainant and respondent above named.

On the 28th of October, 1911, the appellant above named filed a petition of appeal, appealing from an order made on the 4th day of October, nineteen hundred and ten, in a cause wherein the above-named complainant was complainant and Samuel S. Staley was defendant, which order appealed from adjudged the appellant guilty of contempt for having sold, to one George S. Signor, a tract of land situate at the southwest corner of Third Avenue and Eighty-fourth Street, in Stone Harbor, Cape May County, New Jersey, and having offered for sale, to one

George Collison and wife, certain lots between Eighty-third and Ninety-fourth Streets, in Stone Harbor aforesaid, in disobedience and violation of an injunction issued against the said Samuel S. Staley by the Chancellor of this State on or about the 22nd day of October, 1909, and a true copy of the writ of injunction referred to in said petition of appeal is hereto attached and forms part hereof, which injunction was duly served, as provided by the practice of said Court of Chancery. Since the service of said injunction, as well as since the appeal from said final decree and the presentation of the petition of appeal to this Court, the said Samuel S. Staley has repeatedly violated the terms of said injunction, and has made, executed and delivered at least eleven deeds to various persons for tracts of land at Stone Harbor aforesaid, within the area set forth and mentioned in said final decree and injunction; that attached hereto and forming part hereof are copies of the said deeds given by the said Staley, all of which have been recorded in the office of the Clerk of Cape May County.

The list of said deeds is as follows:

1. Deed dated April 3, 1913, Samuel S. Staley to William A. Patterson, recorded in the Clerk's office of Cape May County April 8, 1913, in Book 284 of Deeds, page 42, &c.
2. Deed dated April 3, 1913, Samuel S. Staley to John J. Kernan, recorded in the Clerk's office aforesaid April 28, 1913, in Book 289 of Deeds, page 115, &c.
3. Deed dated April 3, 1913, Samuel S. Staley to Harry C. Ramsberger, recorded in the Clerk's office

aforesaid April 8, 1913, in Book 289 of Deeds, page 44, &c.

4. Deed dated April 3, 1913, Samuel S. Staley to Frank P. Kernan, recorded in the Clerk's office aforesaid April 26, 1913, in Book 289 of Deeds, page 117, &c.

10 5. Deed dated April 11, 1913, Samuel S. Staley to Samuel K. Kistler, recorded in the Clerk's office aforesaid June 6, 1913, in Book 289 of Deeds, page 265, &c.

6. Deed dated April 11, 1913, Samuel S. Staley to Stogdell S. Staples, recorded in the Clerk's office aforesaid June 6, 1913, in Book 285 of Deeds, page 508, &c.

20 7. Deed dated April 15, 1913, Samuel S. Staley to Elliott A. Oberender, recorded in the Clerk's office aforesaid April 21, 1913, in Book 285 of Deeds, page 387, &c.

8. Deed dated April 22, 1913, Samuel S. Staley to Harold S. Cross, recorded in the Clerk's office aforesaid May 15, 1913, in Book 285 of Deeds, page 433, &c.

30 9. Deed dated April 26, 1913, Samuel S. Staley to William C. Stettler, recorded in the Clerk's office aforesaid April 29, 1913, in Book 289 of Deeds, page 120, &c.

10. Deed dated April 26, 1913, Samuel S. Staley to Harry R. Stettler, recorded in the Clerk's office aforesaid April 29, 1913, in Book 289 of Deeds, page 122, &c.

11. Deed dated April 26, 1913, Samuel S. Staley to Charles H. Harvey, recorded in the Clerk's office aforesaid May 9, 1913, in Book 289 of Deeds, page 410, &c.

Copies of the deeds above mentioned, hereto attached, are marked Exhibits 1 to 11, both inclusive.

HOWARD S. RISLEY.

Sworn and subscribed before me this 17th day of 10
June, nineteen hundred and thirteen.

JNO. O. WILSON,
M. C. C. of N. J.

WRIT OF INJUNCTION.

NEW JERSEY, *to wit*:

20

The State of New Jersey to Samuel S.
[SEAL] Staley and John Leaming, their servants,
agents and attorneys,

GREETING:

WHEREAS, by a final decree made in our Court of Chancery on the twenty-second day of October, nineteen hundred and nine, in a certain cause therein depending, wherein South Jersey Realty Company 30
is complainant and the said Samuel S. Staley and John Leaming are defendants, it was among other things, ordered, adjudged and decreed that the said defendants and each of them and each and every of their agents, servants and attorneys, be and they are hereby enjoined and restrained from making

- any contract or agreement for the sale or other disposition of any of the said lands and premises therein and in said bill of complaint described, belonging to the said complainant, or heretofore sold and conveyed by it, or any part thereof, and from making, executing or delivering any deed or other conveyance therefor, or any part thereof, to any person whomsoever, and from lodging for record or causing to be lodged for record any deed or other
- 10 conveyance for the same, or any part thereof, and from assuming and taking or entering into possession of said lands and premises or any part thereof, and from advertising the same, or any part thereof for sale, and from claiming, alleging, stating or in any manner or wise holding themselves out to be the owner or owners of said lands and premises or any part thereof, or entitled to any estate, interest or claim therein, and from doing any act or thing which will in any wise disturb the complainant, or
- 20 its grantees, in the full, complete and absolute possession and ownership of said lands and premises, and every part thereof, and the right to possess, use, occupy and enjoy the same, and every part thereof, and that a writ of injunction issue therefor, in accordance with the prayer of said bill of complaint and the course and practice of this Court.

- We, therefore, in consideration of the premises, do hereby strictly enjoin and command you, the said Samuel S. Staley and John Leaming, your and each
- 30 of your respective servants, agents and attorneys, under the penalty that may fall thereon, that you and every of you, do from henceforth and forever absolutely desist and refrain from making any contract or agreement for the sale or other disposition of any of the said lands and premises therein and in said bill of complaint described, belonging to the

said complainant, or heretofore sold and conveyed by it, or any part thereof, described as follows:

All the following described tract or parcel of land, situate on Seven Mile Beach in the Township of Middle, County of Cape May and State of New Jersey, bounded and described as follows:

BEGINNING at the southerly line of Eightieth Street at low water mark in the Atlantic Ocean and extending thence northwestwardly, along the southerly line of Eightieth Street, two thousand three hundred and twenty feet, more or less, to low water mark of the Great Channel; thence along the same, its various courses and distances, to the northerly line of Ninety-fourth Street, where the same meets said low water mark, thence southwestwardly along the northerly line of Ninety-fourth Street three thousand and ninety-four feet, more or less, to low water mark of the Atlantic Ocean; thence along the same northeastwardly, three thousand eight hundred and sixty feet more or less to the place of beginning. 10 20

EXCEPTING thereout and therefrom the following described land and enumerated lots, as designated on the plan of lots at Stone Harbor, on file in the Clerk's office of Cape May County; No. 1. All that certain strip or piece of land sixty feet wide being thirty feet in width on each side of the centre line of the railroad of the West Jersey Railroad Company, which said centre line is described as follows, viz.: BEGINNING at a point at high water mark on the southeasterly side of Townsend's Inlet, at the end of a bridge recently constructed by the said Railroad Company and extending thence southward as follows, viz.: (1) By a line curving toward the east with a radius of one thousand two hundred and seventy-three feet the distance of one thousand feet 30

- to a stake; (2) south fifteen degrees thirty minutes east one thousand seven hundred and twenty feet to a stake; (3) by a line curving toward the west with a radius of one thousand nine hundred and ten feet, the distance of one thousand eight hundred and fifteen feet to a stake (4) south thirty-eight degrees fifty-eight minutes west twenty-five thousand six hundred and forty-seven and four-tenths feet to a stake (5) by a line curving toward the east with a
- 10 radius of two thousand eight hundred and sixty-five feet, the distance of three hundred and sixty-six and six-tenths feet to a stake; (6) south thirty-one degrees thirty-eight minutes west three thousand five hundred and seventy-nine and three-tenths feet to a stake in the southerly line of One Hundred and Nineteenth Street, as laid down on the general plan of lots of Seven Mile Beach, and still by the same course the additional distance of five thousand four hundred and seven and seven-tenths feet to a stake
- 20 in the northeastern line of lot No. 9 in the deed hereinafter mentioned.

- No. 2. BEGINNING at a stake in the southeastern line of the aforesaid strip of land sixty feet wide and in the southwestern line of Eightieth Street, as laid down on the said plan of lots and extending thence along the said line of the said Eightieth Street south fifty-one degrees two minutes east one hundred and forty feet to a stake in the northwestern line of a street fifty feet wide; thence along
- 30 the line of said street south thirty-eight degrees fifty-eight minutes west one thousand and sixty feet to a stake in the northeastern line of Eighty-fourth Street; thence along the line of the said Eighty-fourth Street north fifty-one degrees two minutes east one hundred and forty feet to a stake in the line of the aforesaid strip of land sixty feet wide, and

thence by said strip of land north thirty-eight degrees fifty-eight minutes west one thousand and sixty feet to the place of beginning; containing three acres and four hundred and six thousandths of an acre, be the same more or less.

No. 3. Also the fifty feet wide street mentioned in above exception No. 2.

Exceptions Nos. 1, 2 and 3, being part of the same premises described in deed from the Seven Mile Beach Company to the West Jersey Railroad Company, dated June 7th, 1889, and recorded in the Clerk's office of Cape May County in Book No. 85 of Deeds, page 213, &c. 10

No. 4. BEGINNING at a stake in the southeasterly line of land the said Railroad Company and in the southwest line of Eighty-fifth Street, as laid down on the plan of lots of Seven Mile Beach, distant thirty feet northwest from the southeast line of Second Avenue as laid down on said plan, and extending thence along the line of the said Eighty-fifth Street 20 south fifty-one degrees two minutes east, one hundred and forty feet to a stake, thence along the northwest line of a fifty feet wide street south thirty-eight degrees fifty-eight minutes west one thousand and sixty feet to a stake in the northwest line of Eighty-ninth Street; thence along the line of the said Eighty-ninth Street north fifty-one degrees two minutes west one hundred and forty feet to a stake in the line of the aforesaid land of the said Railroad Company; and thence by said land parallel with the 30 centre line of the Railroad Company, known as the Avalon Beach property and thirty feet distant southeast therefrom north thirty-eight degrees fifty-eight minutes east one thousand and sixty feet to the place of beginning, containing three acres and four hundred and six thousandths of an acre be the same more or less.

No. 5. Also the fifty feet wide street mentioned in above exception No. 4.

EXCEPTIONS Nos. 4 and 5 being the same premises as described in deed from the Stone Harbor Improvement Company to the West Jersey Railroad Company, dated April 19th, 1892, and recorded in said office in Book No. 100 of Deeds, page 542, &c.

10 No. 6. Lots Nos. 26, 33 and 56 in section No. 82, the said three lots being the same premises conveyed by Benjamin F. Banes, et ux., et als., to William Ziescl, by deed dated May 8th, 1907, and recorded in said office in Book No. 219 of Deeds, page 163, &c.

20 No. 7. Lots Nos. 21 to 42, both inclusive, in section No. 80; Lots Nos. 47 and 48 in section No. 80; Lots Nos. 21, 25, 27 and 29 in section No. 81; Lots Nos. 47, 48, 50 and 52 in section No. 81; Lots Nos. 1 to 20, both inclusive, in section No. 82, and all the lands in front of section No. 82 between Eighty-second Street and Eighty-third Street, oceanward to the exterior line of the Atlantic Ocean; Lots Nos. 21, 22, 23, 27, 29, 31 and 35 in section No. 82; Lots Nos. 43, 44, 47, 49, 52, 54 and 63 in section No. 82; Lots Nos. 29, 30, 31, 32, 33, 34, 35 and 36 in section No. 83; Lots Nos. 43, 44, 45, 46, 47, 50, 52, 53, 54, 56, 58, 60, 62 and 66 in section No. 83; Lots Nos. 21, 22, 23, 24, 25 and 26 in section No. 84; Lot No. 48 in section No. 84; Lots Nos. 53 and 60 in section No. 85; Lots Nos. 47, 53 and 55 in section No. 86;
30 Lots Nos. 47, 48, 51 and 53 in section No. 87, and Lots No. 50 in section No. 91,

and from making, executing or delivering any deed or other conveyance therefor, or any part thereof, to any person whomsoever, and from lodging for record or causing to be lodged for record any deed

or other conveyance for the same, or any part thereof, and from assuming and taking or entering into possession of said lands and premises or any part thereof, and from advertising the same, or any part thereof for sale, and from claiming, alleging stating or in any manner or wise holding themselves out to be the owner or owners of said lands and premises or any part thereof or entitled to any estate, interest or claim therein, and from doing any act or thing which will in any wise disturb the complainant, or its grantees, in the full, complete and absolute possession and ownership of said lands and premises, and every part thereof and the right to possess, use, occupy and enjoy the same and every part thereof. 10

WITNESS, MAHLON PITNEY, ESQUIRE, our Chancellor, at Trenton, the ninth day of November, nineteen hundred and nine.

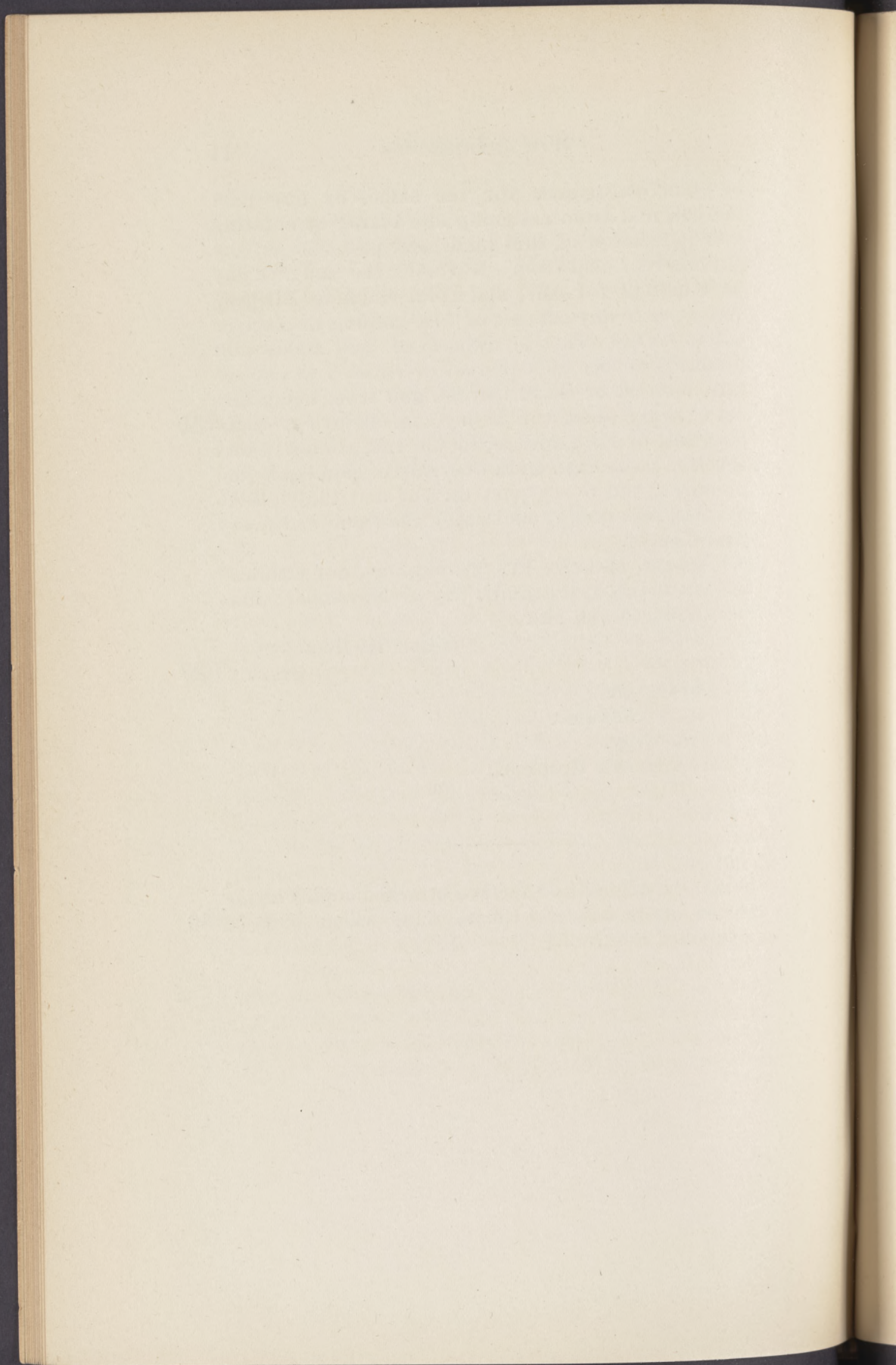
SAML. K. ROBBINS,
Clerk. 20

LEWIS STARR,
Solicitor.

A true copy.

SAML. K. ROBBINS,
Clerk.

[To the affidavit on file are attached copies of the eleven deeds referred to therein, which will be printed if required.] 30



New Jersey Court of Errors and Appeals

Between

South Jersey Realty
Company,

Complainant-Respondent,

and

Samuel S. Staley,

Defendant-Appellant.

On Appeal, &c.

BRIEF ON BEHALF OF RESPONDENT.

This appeal is from an order advised by Vice-Chancellor Howell, dated October 4, 1910, adjudicating the appellant Staley to be guilty of contempt for violating an injunction issued pursuant to a final decree, entered in the same cause October 22, 1909, and fining him fifty dollars and costs, and providing for his imprisonment in the county jail of Camden County for a period of three months from the date of his commitment, to run concurrently with a similar term of imprisonment imposed in another cause pending in the Court of Chancery between the same parties, and entered the same day.

(Case page 21, et seq.)

Notice of appeal was filed October 2, 1911, two days before the expiration of the year, within which an appeal might have been taken.

(Case page 2.)

The petition of appeal was filed October 28, 1911.
(Case page 3, et seq.)

When the state of case was served, written objection thereto was made by the respondent, alleging that it was not complete, for the following reasons:

“1. The petition for attachment for contempt printed on page 9 of the case, is not the petition in the cause in which the adjudication for contempt was made, which is the subject matter of the appeal in this cause, and referred to in the Vice-Chancellor’s opinion.

“2. The portion of the printed case entitled ‘Statement of proceedings before Vice-Chancellor Howell etc.,’ beginning on page 23 of the printed book and ending on page 32, in no way constitutes the record upon which the order appealed from was made, and should not be included in the papers submitted on appeal. The same thing refers to the statement of Mr. May, on page 33, as well as the letter from the solicitor of the complainant to the Vice-Chancellor.

“3. There should be printed the record of the cause which was before the Vice-Chancellor when he made the order appealed from, which includes the bill of complaint and the subsequent proceedings until the entry of the final decree, as well

“as the former adjudication against the appellant for contempt, which was referred to in the Vice-Chancellor’s opinion.”

We contend that the printed case is not sufficient to apprise the Court of all the material and necessary facts connected with this litigation, in order that the appeal may be properly and adequately considered and disposed of.

Furthermore, it appears that the opinion of the learned Vice-Chancellor, printed with the case (Case page 37, et seq.), does not apply to the order from which the appeal was taken.

There were two bills to quiet title filed by the complainant, above mentioned, against the appellant and one John Leaming, both for the purpose of settling title to different tracts of land at Stone Harbor. The earlier suit referred to property located south of Ninety-fourth Street, and the later suit to lands located between Eightieth and Ninety-fourth Streets. Similar injunctions had been issued out of the Court of Chancery under decrees in both cases, and proceedings to punish, for violating these injunctions, were taken in each. In the earlier case, the appellant had been adjudged guilty of contempt, and fined fifty dollars and costs, and he has not yet purged himself of this contempt. He committed violations of both injunctions in the year 1910, which constituted the second violation in the former suit, and the first violation in the second suit. Proceedings, for the purpose of having him punished for this conduct, were instituted, at the same time, in each of the cases, and he was adjudicated to be guilty in both by orders dated October 4, 1910.

Notice of appeal was filed in the later suit only, which involved land between Eightieth and Ninety-

fourth streets. Without being advised specially, it was understood, until the case was printed, that the appeal had been taken in the earlier suit, and when application was made, by the appellant, to the Vice-Chancellor, for an opinion with relation to what had occurred in that suit, he filed his conclusions, which are printed.

(Case page 37, et seq.)

When the appellant prepared his case for submission to this Court, he printed the petition and proceedings with relation to the adjudication of guilt in the later suit, with the opinion of Vice-Chancellor Howell, which referred to the order in the earlier suit, from which no appeal had been taken. As a result, if the notice of appeal is to be considered as applicable to the later proceeding, there is no printed statement of Vice-Chancellor Howell showing what occurred when the order was made. If the appeal is to be considered as relating to the earlier suit, the opinion of Vice-Chancellor Howell, with reference to the same, is printed, but no other papers are presented which refer to that cause.

Under these circumstances it has been found difficult to properly prepare an answer to the brief of appellant, a copy of which has been served, in support of the state of case as printed. The purpose of respondent's counsel, however, is to assume that the proceedings to review refer to the order of adjudication entered in the later suit, and the facts with relation to what occurred before Vice-Chancellor Howell, when the order therein was advised, are accurately set forth in his conclusions as printed, except that the statements as to prior proceedings relate to the former suit, and not the one in which the appeal had been taken.

With this explanation, it is proposed to reply to the causes assigned for reversal in the order in which they are presented in the appellant's petition of appeal.

APPELLANT'S FIRST POINT.

The reason assigned for reversal under this head refers to the statement, in the adjudication, that the term of imprisonment should run concurrently with a similar term provided by an order made in another cause pending between the parties entered the same day.

The existence of another order providing for a similar term of imprisonment, to run concurrently, is a question of fact which must be determined by the statement contained in the order appealed from. It is true that there was a like adjudication in another cause between the same parties, in the same court, and the recital, in the order to that effect, is conclusive on this appeal, there being no evidence to the contrary, except the letter printed in the record, in which Vice-Chancellor Howell states, as his recollection, that there was only one proceeding before him.

In any event, mere inaccuracy of statement with reference to this situation would not justify a reversal.

If no concurrent term of imprisonment existed by a similar order in another cause, the recital in the order appealed from was surplusage, and would not, in the slightest degree, affect its validity.

APPELLANT'S SECOND POINT.

This reason raises the question of whether or not

the appellant was entitled as a matter of right, to be confronted by witnesses produced on behalf of the complainant to show violation of the injunction, with opportunity to cross-examine, and with further concession, as a matter of right, of a continuance from the date when the original order to show cause was made returnable, and when he was expected to appear, in order that he might have his deposition taken in open court, and produce witnesses in his own behalf.

Therefore, the question is presented of whether or not a valid adjudication of guilt can be based upon *ex parte* affidavits attached to the original petition, where the appellant refuses to personally submit himself to the jurisdiction of the court, and, in the absence of any answer or denial by him, or answering affidavits being presented in his behalf, also, if he has, under such circumstances, an inherent right to an adjournment, for the purpose of producing testimony in open court.

In discussing this question, it will be assumed that the petition and accompanying affidavits, presented by the respondent, for the purpose of having the appellant punished for violation of the injunction, made a *prima facie* case, at least, of wilful violation of the Court's decree, which required the defendant to make some answer, and that the order to show cause, allowed thereon, and the petition and accompanying affidavits were duly served upon the appellant as required by the order.

What happened upon the return of the order, is shown by the opinion of Vice-Chancellor Howell.

(Case, page 39, line 1.)

“An order to show cause was signed and
“served upon the respondent Staley, who was

“then sojourning in Philadelphia. He did not
 “appear at the hearing on the return day but
 “sent his counsel, who moved that a day
 “might be fixed for taking the deposition of
 “the respondent, who counsel represented
 “desired to have a hearing in open court. He
 “presented no answering affidavits. His
 “counsel was inquired of as to whether Staley
 “was in court in response to the order to
 “show cause, to which counsel replied that he
 “was not. His counsel stated that he was in
 “Philadelphia, where he lived. I then exam-
 “ined the petition, and finding that the re-
 “spondent Staley had been adjudged guilty
 “of contempt on a former action, and had
 “been fined fifty dollars, inquired of his coun-
 “sel if the fine and costs had been paid, to
 “which his counsel replied that Staley had
 “not paid the fine because he could not raise
 “the money, but that he thought that Staley
 “should be entitled to a hearing without hav-
 “ing complied with the previous order of the
 “Court. Counsel for the complainant then
 “moved that the order be made absolute, and
 “this was done.”

It will be observed that the appellant was not de-
 nied a hearing. He presented no answer, nor
 answering affidavits. He requested the favor of the
 Court to have the hearing adjourned, in order that
 his deposition might be taken. So far as the state-
 ment of his counsel was concerned, the appellant did
 not make any denial of the allegations contained in
 the petition and accompanying affidavits, or attempt
 in any way to justify his absence.

The Vice-Chancellor ascertaining, from an exam-

ination of the papers, that there had been a prior adjudication of contempt, came to the conclusion that the appellant was not entitled to any favor at the hands of the Court until he had purged himself of the prior contempt, and submitted himself personally to the jurisdiction of the Court.

(Case page 39, line 21, et seq.)

And Staley has been doing precisely what the Vice-Chancellor prophesied would occur. An affidavit will be presented to the Court, showing repeated violation of the injunction since he was found guilty of contempt. The original of the affidavit is on file, and copy was served on appellant's solicitor.

Therefore, there being no sufficient answer to the allegation of contemptuous conduct, contained in the petition and affidavits, these allegations must necessarily be taken as confessed against the appellant, and the finding of guilt, as subsequently incorporated in the order appealed from, was the only action which the Court could take.

The injunction issued against appellant, restraining him "from making any contract or agreement
"for the sale or other disposition of any of the lands
"and premises in said bill of complaint described,
"belonging to the said complainant, or heretofore
"sold and conveyed by it, or any part thereof, and
"from making, executing or delivering any deed or
"other conveyance therefor, or any part thereof, to
"any person whomsoever, and from lodging for
"record or causing to be lodged for record any deed
"or other conveyance for the same, or any part
"thereof, and from assuming and taking or entering into possession of said lands and premises or
"any part thereof, and from advertising the same,
"or any part thereof for sale, and from claiming, al-

“leging, stating or in any manner or wise holding
 “themselves out to be the owner or owners of said
 “land and premises, or any part thereof, or entitled
 “to any estate, interest or claim therein, and from
 “doing any act or thing which will in any wise dis-
 “turb the complainant, or its grantees, in the full,
 “complete and absolute possession and ownership
 “of said lands and premises, and every part thereof,
 “and the right to possess, use, occupy and enjoy the
 “same, and every part thereof.”

(Case page 9, line 37, et seq.)

One of the acts complained of was the execution of a conveyance, dated August 3, 1910, less than a year after the injunction was served, by the appellant and his wife to one Signor, for part of the lands involved, a certified copy of which deed was attached to the petition.

(Case page 16, et seq.)

Respondent's Answer to Appellant's Second Point.

A.

It is contended that the appellant was obliged, upon the service of the rule to show cause, to submit himself to the jurisdiction of the Court, and could not appear by counsel and be heard to make an application with reference to any matter addressed to the discretion or favor of the Court or make any defense to the proceedings taken against him, except by appearance in person, or presentation of answer or answering affidavits.

We have been unable to find any authorities in our own State upon this question.

The Supreme Court of Alabama, in *Hamilton vs. Smith*, 51 Ala. 66, upon a petition for a mandamus, compelling the Chancellor to permit a party to be heard in defense of an order of contempt, for violation of a writ of injunction, held that when such party to a pending Chancery suit is attached for contempt for violating an injunction, there is no provision or law, constitutional or statutory, which secures to him the right to be heard by counsel in the matter of his contempt, although he might come personally and interpose a personal defense.

It was held, in *Vertner vs. Martin*, 18 Miss. 103, that a person charged with contempt should appear and answer in person and not by attorney. The facts with relation to this latter case are as follows:

An administrator was in contempt for having failed to pay money decreed by Court. He asked to put in a plea in response to the rule to show cause. The Court held this was not a good defense. A contemner must answer in person.

The same proposition is supported by *People vs. Wilson*, 64 Ill. 195, where the Court held, "Where a party is under a rule to show cause why an attachment should not issue against him for contempt, if he relies upon an excuse only, he should appear in his own proper person. Not doing so, no mere excuse can be regarded as a cause for discharging the rule, but only as going to the question of punishment, in the event the Court finds the absence of a legal justification in the return."

In the case of *Welch vs. Barber*, 52 Conn. 147, which is the main case that the appellant relies upon to support his contention; that the accused had the right to be confronted by witnesses in open court, and to cross-examine them; cites approvingly, on page 157, a paragraph from 2 *Swift's Digest*, 382, as follows:

“If such offense be done by a person not
 “present in court, and proper complaint or
 “information be made, the Court will either
 “make a rule on the party to attend on a cer-
 “tain day to answer to the matter complained
 “of, or else will make a rule upon him to show
 “cause why an attachment should not be
 “granted against him; or if the offense be of
 “very flagrant nature, will grant an attach-
 “ment upon the first complaint; and the party
 “who is ordered to attend in pursuance of
 “such rule must appear in person, and not by
 “attorney.”

The rule seems to be that an alleged contemner is obliged to make personal answer to proceedings instituted for his punishment, either by personal appearance in court, or by making a written answer, or presenting affidavits. *After an issue* is thus framed, then he is entitled to the services of counsel, through whom he may be heard.

Re Clark, 59 Pac. Rep. 22.

Probably the reason for this rule is the fact that original attendance, of a party charged with contempt, was compelled by attachment of his body, and production personally before the Court.

B.

The practice with reference to contempt proceedings is not entirely uniform, and depends largely upon the method by which the Court determines in each case to ascertain the facts in connection with the charge.

We submit that in the absence of any denial in person, or by attorney, or by affidavit or answer, the facts stated in the petition and accompanying affidavits must, of necessity, be taken as confessed against the appellant, and the learned Vice-Chancellor, therefore, had the legal right to make the order appealed from.

Vice-Chancellor Howell, in *Rodberg vs. Lamachinsky*, 74 Atl. 44, in speaking of the practice in proceedings of this character says, "It was begun under the old practice by taking an order, upon proper affidavits, directing that the respondent stand committed for his contempt, specifying the nature of it, unless he should at a time and place named appear before the Court and purge himself of the charge. This order was served personally on the alleged contemner, and if at the return day he did not make sufficient answer the order was merely made absolute, and the respondent was imprisoned or fined according to its terms. If the accused appeared, he was heard in any way that suited the convenience of the Court—by an examination *ore tenus*, upon affidavits, or by propounding interrogatories. If he denied the contempt, the Court, either for itself or by reference to a master, ascertained the fact upon the proof, either party examining witnesses by affidavit or otherwise."

We have been unable to find any authorities which demonstrate that the learned Vice-Chancellor, in such opinion, has not stated the practice properly.

The case of *United States vs. Anon*, 21 Fed. 761, is cited by the Vice-Chancellor in support of his conclusion.

Similar practice was followed in *Foundry Company vs. Crewe*, 74 Atl. 964, where hearing was on affidavits.

In *Nebraska, &c., vs. State*, 57 Neb. 765, a rule to show cause for punishment for contempt was issued, and the defendant demurred to the information. The demurrer was unsuccessful. The defendant did not file any answer. The State then put in some evidence, which was not objected to, although the Court had previously said that by failing to file an answer, the information stood confessed against the contemnners. The latter then offered some evidence in defense, which, on objection, was overruled. Held, by not answering, the contemnners admitted the information, and it was not necessary for the State to put in any evidence, and, as there was no issue, the Court was justified in refusing to hear any evidence.

This case seems to be almost analogous to the proposition which is now being discussed.

Evidence was held to be superfluous in a contempt proceeding where the information and answer were considered sufficient to justify a finding.

Bloom vs. People, 23 Col. 416.

In a proceeding for contempt and disobedience of an order, an affidavit by the plaintiff that he served the order, which was not denied by the defendant, although expressly interrogated in relation thereto, is sufficient evidence of a contempt.

People vs. Brauer, 4 Paige 405.

As an abstract legal proposition, it was incumbent upon the appellant, in hearing before the Vice-Chancellor, to raise an issue upon the allegations contained in the petition and accompanying affidavits, either by denial in person, or written answer, or by answering affidavits. Failing in this, there was no issue upon which any testimony was required, and the learned Vice-Chancellor was justi-

fied in acting upon the evidence contained in the petition and affidavits, which were before him.

C.

Under the authorities cited in the opinion of Vice-Chancellor Howell (Case, page 40), he was warranted in refusing to grant any favors or concessions to the appellant, in view of the latter's past contumacious conduct, and his failure to submit himself to the jurisdiction of the Court, and purge himself of contempt.

The practice adopted by the Vice-Chancellor has been universally recognized in this State from time immemorial.

APPELLANT'S THIRD POINT.

This point refers to the authority of a Vice-Chancellor to make an adjudication of contempt where the act was not committed in his presence.

Under the Chancery rule 204a, there is a general reference, by the Chancellor, to the various Vice-Chancellors. This rule is as follows:

“Applications in the following cases may be
 “made to any Vice-Chancellor, and such ap-
 “plications are hereby referred to such Vice-
 “Chancellor to hear and advise orders and
 “decrees therein without special order of ref-
 “erence:

“1. Applications for writs of *habeas*
 “*corpus* to be issued out of the Court of
 “Chancery under its general equity jurisdic-
 “tion and hearings on the petition, writ and
 “return.

“2. Applications for writs of *ne exeat*, interlocutory injunctions and temporary restraining orders.

“3. Applications in relation to insolvent corporations, including adjudications of insolvency, appointment of receivers, and all applications for orders in the cause, to and including distribution among creditors.

“4. Applications on summary proceedings under the statute for the production, custody or examination of the books of corporations and the investigation of the election of the directors of corporations.

“5. Applications in any cause or proceedings for orders or decrees, excepting decrees *pro confesso* and final decrees, and excepting orders of reference to a Vice-Chancellor or to an advisory master, or to a special master in divorce proceedings. Any rule, order or decree, or other than a final decree advised by a Vice-Chancellor upon such application, when marked filed by him or by the clerk, shall be considered and taken as made by the Court in open court, and the rule, order or decree advised and signed by such Vice-Chancellor shall be deemed and taken as the full minute of the rule, order or decree of the Court. Upon such filing of any such rule, order or decree for a writ of *habeas corpus* or *ne exeat*, or injunction, the appropriate writ shall issue. Provided, however, that when any application in any of the above causes or matters has been made to one of the Vice-Chancellors, any other Vice-Chancellor may hear any subsequent application there-

“in, if the cause has not been referred by
 “special order, but the Vice-Chancellor to
 “whom a subsequent application therein shall
 “be made under this rule, may decline to en-
 “tertain the same, if, in his judgment, such
 “application should be made to the Vice-
 “Chancellor to whom any previous applica-
 “tion in such cause or matter has been
 “made.”

Under the practice inaugurated pursuant to this rule, and similar ones in force since Vice-Chancellors have been assisting the Chancellor in disposing of the work of the Court of Chancery, it has been the universal custom for the Vice-Chancellors to hear and determine all such matters.

The following are a few of the cases in which such function has been exercised, and where the practice has received the approval of this Court.

In the case of *Frank vs. Herald*, 64 Eq. 371, which arose out of the labor troubles in the City of Paterson several years ago, an adjudication of contempt was made by Vice-Chancellor Pitney, and, subsequently, this Court, on motion, dismissed the appeal, on the ground that the proceedings were punitive in character, taken solely for the purpose of vindicating the authority and dignity of the Court, and, therefore, not reviewable. This result could not have been reached unless the Appellate Court concluded that the Vice-Chancellor had jurisdiction to advise the order.

In *Railroad vs. Thompson*, 49 Eq. 318, this Court reversed a finding of contempt advised by Vice-Chancellor Pitney. No question, however, was raised in the appellate tribunal as to the authority of the Vice-Chancellor to make the adjudication.

In effect, the order appealed from is the action of the Chancellor, actually taken by him, although advised by the Vice-Chancellor, in accordance with the universal practice. The Chancellor, by signing the decree, thus advised, makes the adjudication his act, which cannot be questioned on appeal, for the reason that the hearing was before a Vice-Chancellor.

APPELLANT'S FOURTH POINT.

The claim is made, under this point, that the learned Vice-Chancellor exceeded his authority in providing, as a punishment for the violation, imprisonment for a definite term. This point has been decided, adversely to the appellant's contention, by this Court in *Frank vs. Herald*, 51 Atl., page 774, where it was held as follows:

1 *Gen. St.*, page 392, providing that "in order, to enforce obedience to process, rules and orders of the Chancery Court, a person guilty of such contempt may be fined a sum not to exceed fifty dollars, and be committed until the order or process is obeyed," does not preclude the Chancery Court from imposing a jail sentence on a person guilty of contempt in violating a restraining order.

APPELLANT'S FIFTH POINT.

The reason for reversal assigned under this head, is so indefinite and uncertain that it is impossible to ascertain precisely what the appellant's counsel intend to rely upon.

The petition of the complainant, together with the affidavits and exhibits attached thereto, (Case, page

9, et seq.), were before the learned Vice-Chancellor, and there being no denial of the matter stated, and no issue raised which would require the taking of depositions, the Vice-Chancellor certainly had the power to adjudicate the question of contempt on the facts thus presented.

Jurisdiction existing, the learned Vice-Chancellor had the authority to determine whether there had been any violation of the process of the Court, which would be an affront to the dignity and authority thereof.

The case of *Welch vs. Barber*, 52 Conn. 147, cited by the appellant, does not support the proposition contended for. There, an answer was presented denying the facts stated in the moving papers.

Furthermore, the *Holt case in New Jersey*, 55 Law 384, is not at all in point.

APPELLANT'S SIXTH POINT.

Under this reason, the appellant argues that because the order to show cause, allowed on the petition, praying that the appellant be declared guilty of violating the injunction, was served in Pennsylvania, there was a deprivation of rights conferred by the Federal Constitution.

The order to show cause expressly provided that service thereof might be made either within or without this State.

(Case, page 21, line 13.)

The original bill filed in this case was to quiet the title to the complainant's lands. It was a proceeding *in rem*, and jurisdiction with reference to such

matter could be acquired by service out of the State, if obtained in accordance with our statute.

Andrews vs. Guayaquil R. R. Co., 61 Eq. 211;

Ampiro vs. Fidelity, 75 Eq. 560.

An examination of the antecedent proceedings in this cause, will show that the bill was filed June 2, 1909, and a notice to absent defendants, provided for under a proper order of publication, was actually served June 30, 1909. A decree *pro confesso* was regularly entered, and a final decree, after proofs taken under an order thereof, was entered October 22, 1909. The injunction issued thereunder was served November 12, 1909. In the latter part of March, 1910, the appellant voluntarily appeared in the cause, and presented a petition to dissolve the injunction, assigning various grounds, none of which, however, related to the insufficiency of the service of the order of publication, or raised any question as to jurisdiction over the defendant in the cause.

In support of this petition, he presented an affidavit to his Honor, Chancellor Pitney, on April 5, 1910. After hearing, the petition was dismissed, and the prayer thereof denied, and immediately thereafter an order was entered to that effect.

It appears, therefore, not only did the appellant have requisite notice of this proceeding *in rem*, as provided by the New Jersey statute, but he voluntarily appeared in the action, and thereby submitted himself to the jurisdiction of the court.

Where a defendant was served by publication, and makes a general appearance for the purpose of hav-

ing the judgment vacated, and being heard in the defense of the suit, the service of summons is not thereby challenged, and such an appearance brings the party into court.

Beckwith vs. Douglas, 25 Kan. 229.

When defendant, after default, appears on the assessment of damages, cross-examines witnesses, offers evidence, and asks an instruction, he waives all objection to the service of summons.

Ryan vs. Driscoll, 83 Ill. 415.

A party who appears and contests the assessment of damages under a judgment by default, without moving the Court to set aside the judgment by default, thereby waives all defects of service.

Touchstone vs. Harris, 22 Ark. 365.

A party who appears in a case, asks to be and is made a party defendant for the purpose of objecting to a confirmation of a sale in foreclosure proceedings, and objects that he was the owner and was not served with summons, held, makes a general appearance for all purposes of the case.

Wilson vs. Nebraska, &c. Co., 62 Neb. 549;
Nebraska, &c., Co. vs. Kroener, 63 Neb. 289.

The defect in a judgment, decreeing a wife separation from her husband, and awarding her a weekly allowance, by reason of there having been no personal service on him, giving jurisdiction of him authorizing a money judgment, is cured by his subsequent appearance under a petition with her to have the decree set aside in consideration of an assignment by him to her.

Tisdale vs. Rider, 104 N. Y. S. 77.

The Court below having jurisdiction of the property involved in these proceedings, and having acquired jurisdiction over the person of the defendant by his voluntary appearance in the cause, there can be no doubt whatever that it was perfectly proper to provide, for the service of the order to show cause in the contempt proceedings, out of New Jersey, otherwise, a defendant against whom a final decree, directing the issuance of an injunction, has been entered, may, by voluntarily leaving the jurisdiction of the Court, violate the provisions of the injunction with impunity. To adopt such a rule would render nugatory and inefficacious all efforts of a Court to compel obedience to its decrees.

In this connection, it might be added as an incident to a proceeding to quiet title, the Court of Chancery had the authority to restrain the defendant from performing any act which would have the effect of rendering useless the decree of the Court. It has been held, in a number of cases, that under such circumstances a court of equity has the jurisdiction to enjoin the defendant from setting up claim of title to real estate after decree that he has no interest therein or title thereto.

Richey vs. Benes, 87 Pac. 903;

Doris vs. McManus, 86 Pac. 909;

Whitehouse vs. Jones, 55 S. E. 731;

Brooks vs. Underwood, 34 Cal. 563;

Los Angeles vs. Los Angeles Co., 93 Pac. 1135.

The following is a list of cases in New Jersey where relief by way of injunction was granted in connection with bills to quiet title:

Morris Canal vs. Jersey City, 12 Eq. 79;

Holmes vs. Chester, 26 Eq. 79;
Yanger vs. Skuina, 14 Eq. 389;
Haven vs. Thompson, 23 Eq. 321;
Kana vs. Bolton, 36 Eq. 21.

Also another case between the same parties to this litigation, when an injunction was issued under decree advised by Vice-Chancellor Garrison, whose opinion is reported, and appears under the following title:

South Jersey vs. Staley, 75 Eq. 63.

APPELLANT'S SEVENTH POINT.

The facts upon which this reason is stated are not properly understood by appellant's counsel.

One of the acts which constituted a violation of the injunction issued against the appellant was the execution of a deed by him and his wife to one Signor, copy of which appears Case, page 18, et seq. It therein appears that the acknowledgment to this instrument was taken in New Jersey before Philip Schmitz, a Commissioner of Deeds. The act of acknowledging this deed was a direct and wilful violation of the injunction.

(Case, page 10.)

The order appealed from is not reviewable.

It has been repeatedly held, in this State, where the Court of Chancery makes an order for the punishment, by imprisonment, of a litigant guilty of contumacious conduct, such order is punitive in

After this brief was printed we discovered the provisions of Chapter 270 of the Laws of 1909, which seem to permit appeals in contempt cases.

character, and taken to vindicate the authority and dignity of the Court, and, therefore, not reviewable.

Frank vs. Herald, 64 *Eq.* 371;

Seastream vs. N. J. Exhibition Co., 65 *Atl.* 982.

We submit, therefore, that the appeal should be dismissed, upon the ground last stated, or, at least, the action of the lower Court should be affirmed.

LEWIS STARR,

Solicitor for and of Counsel
With Respondent.

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N. J. Court of Errors and Appeals.

Between	}	APPEAL FROM THE COURT OF CHANCERY ON BILL AND ORDER IN CONTEMPT.
SAMUEL S. STALEY,		
<i>Appellant,</i>		
and		
SOUTH JERSEY REALTY COMPANY,		
<i>Respondent.</i>		

STATEMENT OF THE CASE.

The order appealed from in this case was made upon a rule to show cause why the appellant should not be adjudged guilty of and punished for contempt of a decree of the Court previously made in the cause in which the petition for an order to show cause is entitled. The decree, which it is alleged in the petition was violated, was, as appears by the recitals of the petition (Record, pp. 9-13), for an injunction to restrain the appellant from the sale or disposition of certain lands described in the petition and from making any deed thereof, or advertising such lands for sale, or from claiming to be the owner thereof.

At the return of the rule to show cause certain proceedings were had before Vice-Chancellor Howell of which it appears that, although they involved not only the rights of the appellant to property of which he claimed to be the owner, but his personal liberty, no minutes or record were kept. In the absence of any formal or official record of those proceedings it has been necessary to resort to the unusual proceeding of

inserting in the record the statement of the Vice-Chancellor obtained on May 24th last, after a period of more than ten months though in a case of such gravity it was manifestly the duty of the Court to have such record made and preserved. A statement of each of the solicitors who appeared at that hearing is also inserted. That of the solicitor for the defendant and present appellant being in an affidavit and that of the solicitor for the complainant and present respondent being in the form of a letter to the Vice-Chancellor.

The three statements showing what occurred at that hearing are submitted to this Court in the confident assurance that upon their face the affidavit and supplementary statement of Colonel May is characterized by more careful attention to the details of what occurred at the hearing. Both the statement of Mr. Starr and that of Vice-Chancellor Howell contain manifest errors to which the attention of the Court will be hereafter directed while that of Colonel May is sufficiently corroborated in every essential point by either one or the other of the statements to indicate its general accuracy.

It is also to be noted that the affidavit of Colonel May was made while the whole matter of the hearing was comparatively recent, in September, 1911, being a result of a correspondence with the Vice-Chancellor following an application to him for a copy of the record as early as July 17, 1911.

It is also to be noted that practically every fact which is necessary to show the illegality of the order appealed from will be found established on the face of each one of these three statements. It appears from them all that the contempt complained of was the violation of an order made in behalf of the complainant; that the acts complained of as a violation of the order were not committed in the State of New Jersey in the presence of the Court; that the defendant was not at-

tached and brought before the Court; that he was not accorded any hearing although it was expressly demanded by his counsel, and that the appellant was held guilty of contempt by the Vice-Chancellor, and sentenced to pay a fine of fifty dollars and costs of proceedings and to imprisonment in the county jail of Camden County for a term of three months.

BRIEF ON APPEAL.

The petition of appeal sets forth seven distinct grounds upon which it is claimed on behalf of the appellant that the order appealed from was illegal and should be set aside and reversed. It will be, perhaps, as convenient to follow this enumeration of the reasons and ask the Court to consider them in order.

Before considering them it may be stated that the cases of

- Vowles *v.* Young, 9 Ves. 172;
- State *v.* Clerk of Bergen, 25 N. J. L. (1 Dutch) 209;
- Endicott *v.* Mathis, 9 N. J. Eq. (1 Stock) 110;
- Freeze *v.* Swayze, 26 N. J. Eq. (11 C. E. G.) 437;

cited by the learned Vice-Chancellor in his record of the proceedings, will be found, on examination, to have no application to the case at bar and not to sustain his findings.

1. That the latter part of the order stating that the three months' imprisonment ordered was to run concurrently with a similar term imposed in another cause, pending in said court between the said parties, is erroneous inasmuch as the previous Order in Contempt, dated June 18th, 1910, imposed simply a fine

and not an order of imprisonment, as will appear from the order itself, upon the production of the same from the records.

This order of June 18th, 1910, is the only one to which by any reasonable construction the order appealed from can be held to refer. It is true that Judge Starr alleges in his statement that at the hearing in October, 1911, two cases were heard and two orders made but this is flatly contradicted by the statement of Vice-Chancellor Howell, who states that he made one order and, as appears from the statement of Mr. Staley's solicitor (Record, p. 33), that at the hearing in Chancery Chambers on May 7th, 1912, the Vice-Chancellor stated orally in open court that Mr. Starr was mistaken in his statement that there were two cases heard at that time, and as a matter of fact there was only one case before him and passed upon.

2. That in this case the appellant was entitled, upon the rule to punish him for contempt, to require proof to be made of the contempt and to be confronted with the witnesses upon whose testimony he was accused, in order that he might have an opportunity for cross-examination and to produce witnesses in court in contradiction thereof, and, further, that the appellant had the right to be examined and have the opportunity, if desired, to purge himself of any contempt, if such were proved. It is perhaps sufficient in support of this proposition to cite the fact that the same Vice-Chancellor Howell, at the hearing of the previous case of contempt to which he alludes in his statement, expressly ruled that the witnesses on both sides should be produced in open court for cross-examination.

This decision was made by the Vice-Chancellor on the authority of the case of

Seastream v. New Jersey Exhibition Co.,
69 N. J. Eq. 15.

There was not legal notice to appellant of such character as the nature of the proceeding required.

In re Clark, 208 Mo. 121, where the character of the notice required in such cases is fully discussed.

3. The Vice-Chancellor in this State has no power to punish for any contempt not committed in the presence of the Court.

The only authority of the Vice-Chancellor to punish for contempt is conferred by Sec. 102 of the General Revision of the Act relating to the Court of Chancery, P. L. 1902, p. 543:

“The Vice-Chancellor, when sitting as Judge of Court of Chancery for the transaction of business of said court, shall have power to adjudicate upon and punish all contempts committed by any person or persons in the presence of the Court so held by such Vice-Chancellor, in same manner as the Chancellor may now do * * *

Provided that any person adjudicated guilty of contempt under this act shall have the right of immediate appeal to the Chancellor, which appeal shall operate as a stay of proceedings and the Chancellor shall provide by rule for the manner and method of such appeals and shall hear them on the merits.”

So in another section of the Act the power to enforce obedience to process, rules and orders of the Court by punishing for contempt limits such punishment to a fine of not exceeding fifty dollars and imprisonment until the order is obeyed and the fine and costs paid. Section 82 of the same Act (P. L., 1902, p. 538) is as follows:

“To enforce obedience to the process, rules and orders of the Court of Chancery, where any person shall be in contempt according to the law, practice or course of said Court he shall for every such contempt and before he be released or discharged

from the same pay to the Clerk in Chancery for the use of this State, a sum not exceeding fifty dollars as a fine for the said contempt; and the said person being in Court upon process of contempt or otherwise shall stand committed and remain in close custody until the said process, rule or order shall be obeyed and performed; and until the fine so imposed for such contempt with the costs be fully paid."

So also Section 69 of the same Act provides that the Chancellor is authorized to commit for contempt a person violating an injunction "if the person so offending shall be brought before the Chancellor by virtue of the said attachment."

Section 69 is in full as follows:

"The Chancellor may, on motion supported by proof, order an attachment for contempt to be issued against any person charged with disobedience to any injunction; and if the person so offending shall be brought before the Chancellor, by virtue of the said attachment, and if upon a hearing such disobedience shall appear, the Chancellor may, in his discretion, order such offender to be committed and kept in close custody until he shall give further order therein."

It would appear from this Act that the authority of the Court of Chancery, even when exercised by the Chancellor himself, to punish for violation of an injunction can only be exercised when the party offending is brought before him by attachment.

It is worth while to note here that although the Section 102 of the Act of 1902 above quoted expressly directs that the Chancellor "shall provide by rule" for appeals from the action in contempt cases of a Vice-Chancellor, no such rule appears to have been promulgated.

The decisions in this State show that the administration by the Courts of the power of punishing for

contempt has been exercised with great care and with due regard to the rights of the persons accused.

In the case of *in re Haines*, 67 N. J. L. 442, as late as 1902, in a case of admirable brevity and at the same time great comprehensiveness, the proper practice is stated on almost if not every point involved in this case.

In that case the Court declared "compulsory process should be used with great discretion and never be used unless it is apparent that ordinary methods will be inefficacious." The proper procedure is declared to be a rule to show cause supported by affidavit or proof in open court, and a hearing at which the accused cannot be required to be a witness against himself. It discusses the necessary exactness required in subpœnaing, proper service, and declares it illegal to require one accused of contempt to be compelled to purge himself before a proof of his guilt. The rule stated by Chief Justice Beasley in Holt's case, *infra*, is followed.

It is a well-settled general rule that in proceedings for contempt all the presumptions are in favor of the accused, and this was emphatically expressed by Vice-Chancellor Howell in

Oscar Barnett Foundry Co. v. Crowe,
(N. J. Eq.), 74 Atl. 964.

And in *Frowley v. Supr. Ct. of Modoc*, 158 Cal. 220, 224, 110 Pac. 817, it was said that in proceedings in contempt (civil in that case) being of criminal nature, no intendments or presumptions are indulged in aid of the complaint.

4. The Act alleged to have been committed by the defendant and which, by the order appealed from, it was attempted to punish as a contempt, if it were such, was a civil and not a criminal contempt, as those terms

are known and used in the law, and such contempt as that charged in this case is not punishable by imprisonment for a definite term.

The distinction between civil and criminal contempt is very well understood and clearly defined in a multitude of cases, possibly nowhere better than in the courts of this State.

In re Brewster, 15 N. J. L. J. 360.

It is there held that contempts of Court are of two classes: First, those against the dignity of the court, or of disrespect exhibited to itself or its officers. Second, those in which the contempt consists of the wilful refusal to obey some decree or order of the court which it is in the power of the party to perform, and which he refuses to obey without sufficient excuse therefor.

The distinction is also set forth in other cases,

Frank v. Herold, 64 N. J. Eq. 371;

Thompson v. Pa. R. R. Co., 48 N. J. Eq. 105,

where the breach of an injunction restraining a railroad company from operating its engines in front of plaintiff's house, was held punishable as a civil contempt, without reference to the question whether there was any intention to condemn the authority and dignity of the Court.

The distinction between civil and criminal contempt is discussed and defined and the former class is declared to be "for the purpose, mainly, if not wholly, of protecting or enforcing private rights, and in which the public have no special interest." The superintendent of the defendant company was held in contempt and sentenced to pay a fine and costs and a counsel fee and to be committed,—not for a fixed term, but "until he do pay them."

On appeal from that order it was reversed by the Court of Errors and Appeals on the sole ground that the defendant company should have been proceeded against for contempt and not the superintendent who exercised such authority as he had to enforce obedience to the order of the Court.

Pa. R. R. Co., *et al.*, *v.* Thompson, 49 N. J. Eq. 318.

All the Courts, Federal and State, make the distinction and define the difference between the two species of contempts in very much the same terms.

Criminal contempt is that which is committed in the actual view and presence of the Court.

In re Dill, 32 Kan. 668;
Smyth v. Smyth, 28 Okla. 266, 114 Pac. 257;
Neeley v. State, (Miss.) 54 So. 315.

To fall within this class the Act must be done with a deliberate purpose to condemn the authority of the Court.

In re Rice, 181 Fed. 217.

On the other hand civil contempts are such as affect private persons, as where the party refused to obey an order which benefits a private person.

State, *Ex inf.*, *Crow v. Shepherd*, 177 Mo. 205;
Powers v. People, 114 Ill. App. 323;
Welch v. Barlow, 52 Conn. 147, 52 Am. Rep. 567;
Wages v. Com'th, 13 Ky. L. Rep. 925;
Ex parte Robertson, 27 Tex. App. 628;
People v. Court of O. & T., 1 N. Y. 245, 54 Am. Rep. 691.

Such contempt consists in the disobedience of an order for the benefit of a party litigant.

Clay v. Waters, 178 Fed. 385;;
People v. Kizer, 151 Ill. App. 6.

Affecting only the rights of party litigants.

In re Rice, 181 Fed 217.

This species of contempt is characterized sometimes as civil, sometimes as constructive and sometimes as indirect contempt, but by any of these terms is meant in every case an act which is committed out of the view and beyond the presence of the Court.

Stewart v. State, 14 Ind. 7;
Frowby v. Supr. Ct. of Modock, 158 Cal. 220, 110 Pac. 817;
Saal v. So. Brooklyn Rwy. Co., 122 App. Div. 364;
Ex parte, Clark, 208 Mo. 121;
Ex parte, Wright, 65 Ind. 504.

It is the policy of the law not to extend the proceedings for constructive contempt to cases not coming within the established rule.

Haskett v. State, 51 Ind. 176.

Proceeding in contempt for violation of injunction is civil, not criminal.

Costella Land & Investment Co. v. Allen, 15 N. M. 528, 110 Pac. 847;
Gorham v. New Haven, 82 Conn. 153, 72 Atl. 1012;
Vilter Mfg. Co. v. Humphrey, 132 Wis. 587, 112 N. W. 1095;
Hake v. People, 230 Ill. 174, 82 N. E. 561;

Anderson v. Indianapolis Drop Forging Co.,
34 Ind. App. 100, 72 N. E. 277;
Patterson v. Wyoming Valley Dist. Council,
31 Pa. Super. Ct. 112.

In case of contempt not committed in the presence of the Court, the offender must be brought before the Court by a rule or some such process.

Burdette v. Com'th, 103 Va. 838, 68 L. R. A. 251.

An order imposing punishment for contempt must be made publicly in open Court; if in Chambers it is void.

State v. Nathans, 49 So. Car. 199.

A good definition of criminal and civil contempt and the distinction between them is found in

Androscoggin & Kennebec R. R. Co. v. Androscoggin R. R. Co., 49 Me. 392;
and also in
Ex parte Gubenoge, 2 Okla. Crim. Rep. 110,
100 Pac. 39,

where the Court said:

“The distinction between civil and criminal contempts is plainly drawn. A ‘civil contempt’ is where a person fails or refuses to do something which he has been ordered to do for the benefit of the opposite party to the cause. The punishment by imprisonment is for the purpose of coercing the performance of the act. A civil contempt is instituted by a private individual for the purpose of protecting or enforcing his rights. The order in such a case is not in the nature of a punishment, but is coercive, to compel him to act in accordance with the order of the Court. A ‘criminal contempt’ embraces all acts committed against the majesty of the law, and the primary purpose of their punishment is the vindication of public authority and the dignity of the courts.”

The foregoing cases have been cited to show how universally the State as well as the Federal Courts recognize and enforce the distinction between civil and criminal contempt. The whole subject, however, is thoroughly discussed in a recent case which has attracted a great deal of public attention and which in every particular and detail is analogous to the case here at bar. This is the case of *Gompers v. Buck's Stove and Range Co.*, 221 U. S. 418, in which case, as in the case at bar, the original proceeding was a rule on the defendants requiring them to show cause why they should not be attached for contempt and adjudged by the Court to be in contempt of its order and decree and be punished for the same.

In the *Gompers* case the appellants had been convicted of contempt in the Supreme Court of the District of Columbia, the act with which they were charged being the breach of an injunction. The case was entitled *Buck's Stove and Range Company v. American Federation of Labor, et al.* and clearly showed a cause between two private litigants, as in the case at bar, which is entitled the *South Jersey Realty Company v. Samuel S. Staley*.

In the *Gompers* case the petition contained a prayer for other and further relief and so did the petition in the case at bar. The defendants in the *Gompers* case were sentenced to imprisonment for a definite period, so also is the defendant in the case at bar. The order adjudging *Gompers* and his associates to be guilty of contempt awarded costs to the complainant. The order made in the present case does the same.

The points of identity in the two cases that have been enumerated are those upon which the opinion in the United States Supreme Court lays stress as showing the character of the proceedings to be for a civil and not for a criminal contempt.

It is worthy of note in these days of dissenting opinions that the decision in this case is unanimous.

In distinguishing between civil and criminal contempt Mr. Justice Lamar states in the Gompers case that:

“The order for imprisonment in this class of cases, therefore, is not to vindicate the authority of the law, but is remedial, and is intended to coerce the defendant to do the thing required by the order for the benefit of the complainant. If imprisoned, as aptly said in *Re Nevitt*, 54 C. C. A. 622, 117 Fed. 451, ‘he carries the keys of his prison in his own pocket.’ He can end the sentence and discharge himself at any moment by doing what he had previously refused to do.

“On the other hand, if the defendant does that which he has been commanded not to do, the disobedience is a thing accomplished. Imprisonment cannot undo or remedy what has been done, nor afford any compensation for the pecuniary injury caused by the disobedience. If the sentence is limited to imprisonment for a definite period, the defendant is furnished no key, and he cannot shorten the term by promising not to repeat the offense. Such imprisonment operates not as a remedy coercive in its nature, but solely as punishment for the completed act of disobedience.”

“In this case the alleged contempt did not consist in the defendant’s refusing to do any affirmative act required, but rather in doing that which had been prohibited. The only possible remedial relief for such disobedience would have been to impose a fine for the use of complainant, measured in some degree by the pecuniary injury caused by the act of disobedience. *Rapalje*, Contempts, Secs. 131-134; *Wells, F. & Co. v. Oregon R. & Nav. Co.*, 9. Sawy. 601, 19 Fed. 20; *Re North Bloomfield Gravel Min. Co.*, 11 Sawy. 590, 27 Fed. 795; *Sabin v. Fogarty*, 70 Fed. 483.

“But when the Court found that the defendants had done what the injunction prohibited, and thereupon sentenced them to jail for fixed terms

of six, nine, and twelve months, no relief whatever was granted to the complainant, and the Buck's Stove & Range Company took nothing by that decree."

"There is another important difference. Proceedings for civil contempt are between the original parties, and are instituted and tried as a part of the main cause. But, on the other hand, proceedings at law for criminal contempt are between the public and the defendant, and are not a part of the original cause. * * * * *

"We find nothing in the record indicating that this was a proceeding with the court, or more properly the government, on one side and the defendants on the other. On the contrary, the contempt proceedings were instituted, entitled, tried, and, up to the moment of sentence, treated as a part of the original cause in equity. The Buck's Stove & Range Company was not only the nominal, but the actual, party on the one side, with the defendants on the other. The Buck's Stove Company acted throughout as complainant in charge of the litigation. As such and through its counsel, acting in its name, it made consents, waivers, and stipulations only proper on the theory that it was proceeding in its own right in an equity cause, and not as a representative of the United States, prosecuting a case of criminal contempt. It appears here also as the sole party in opposition to the defendants; and its counsel, in its name, have filed briefs and made arguments in this court in favoring affirmance of the judgment of the court below.

"But, as the court of appeals distinctly held that this was not a part of the equity cause, it will be proper to set out in some detail the facts on this subject as they appear in the record.

"In the first place the petition was not entitled 'United States v. Samuel Gompers, *et al.*' or '*In re Samuel Gompers, et al.*,' as would have been proper, and, according to some decisions, necessary, if the proceedings had been at law for criminal contempt. This is not a mere matter of form,

for manifestly every citizen, however unlearned in the law, by mere inspection of the papers in contempt proceedings ought to be able to see whether it was instituted for private litigation or for public prosecution, whether it sought to benefit the complainant or vindicate the court's authority. He should not be left in doubt as to whether relief or punishment was the object in view. He is not only entitled to be informed of the nature of the charge against him, but to know that it is a charge, and not a suit. *United States v. Cruikshank*, 92 U. S. 542, 559, 23 L. ed. 588, 593."

"In proceedings for civil contempt, the complainant, if successful, is entitled to costs. *Rapalje*, *Contempts*, Sec. 132. And evidently on the theory that this was a civil proceeding, and to be governed by the rules applicable to an equity cause, the *Buck's Stove & Range Company* moved the court to amend the decree so as to award to it 'its costs.' After argument by solicitors for both parties, the motion was granted, and the court adjudged that the complainant do recover against the defendants its costs in said contempt proceedings. This ruling was no doubt correct, as this was a civil case, but could not have been granted in a proceeding for criminal contempt, where costs are not usually imposed in addition to the imprisonment. Where they are awarded, they go to the government, for the use of its officers, as held by Justice Miller, on circuit. *Durant v. Washington County*, *Woolw.* 377, *Fed. Cas. No.* 4,191.

"After setting out in detail the acts of alleged disobedience, the petition closes with the following prayers: (1) 'That the defendants show cause why they should not be adjudged in contempt of court and be punished for the same'; and (2) 'that petitioner may have such other and further relief as the nature of its case may require.'

"'Its case,' not the government's case. 'That petitioner may have relief,' not that the court's authority may be vindicated. The *Buck's Stove & Range Company* was not asserting the rights of the public, but seeking 'such other and further re-

lief as the nature of its case may require.' If it had asked that the defendants be forced to pay a fine to the government, or be punished by confinement in jail, there could have been no doubt that punishment pure and simple was sought.

"On the other hand, if it had prayed that the Court impose a fine payable to the Buck's Stove & Range Company, the language would have left no doubt that remedial punishment was sought. It is not different in principle, if, instead of praying specifically for a fine payable to itself, it asks generally for 'such relief as the nature of its case may require.' In either event such a prayer was appropriate to a civil proceeding, and under it the Court could have granted that form of relief to which the petitioner was entitled. But, as the act of disobedience consisted not in refusing to do what had been ordered, but in doing what had been prohibited by the injunction, there could be no coercive imprisonment, and therefore the only relief, if any, which 'the nature of petitioner's case' admitted, was the imposition of a fine, payable to the Buck's Stove & Range Company."

"But, as we have shown, this was a proceeding in equity for civil contempt, where the only remedial relief possible was a fine, payable to the complainant. The company prayed 'for such relief as the nature of its case may require,' and when the main cause was terminated by a settlement of all differences between the parties, the complainant did not require, and was not entitled to, any compensation or relief of any other character."

5. The action of the Vice-Chancellor in making the order complained of without hearing any proofs was obnoxious to the criticism of Chief Justice Beasley in

Holt's Case, 55 N. J. L. (26 Vroom), 384.

In that case the Court acted on its own knowledge and without proof of any kind convicted the defendant of contempt. The imputed contempt was a newspaper article alleged to be libellous, calling in question the

impartiality of the Court in the trial of an indictment. The Chief Justice in ordering the conviction to be set aside thus emphatically expressed himself with respect to such proceedings as those of which we complain in the case at bar.

“Thus from first to last the members of the court (General Quarter Sessions of Camden) were the accusers, witnesses and judges; they took no testimony, but convicted the defendant from their own intuitive knowledge. It is not necessary to say that such a course has not, in any respect whatever, the least semblance of a proceeding in a court of law. * * * Let the conviction be set aside.”

In that case, as in the one at bar, objection had been made to the proceeding without evidence or proof, and was overruled by the Court below.

The offence was not committed in the presence of the Court, “and the Judge could have no knowledge of the facts which constituted the offence except as they were communicated to him by others.” He could not of his own motion and upon facts within his own knowledge render judgment against the delinquent. As the facts must be established by proof a trial was necessary.”

Welch v. Barber, 52 Conn. 147, 52 Am. Rep. 567, was singularly like the case at bar. The offence was making a false affidavit to secure a continuance. The case was heard in the absence of defendant. The only proof was an affidavit of three persons, “being the same affidavit which is attached to the application.” It was objected to but admitted. Two of the affiants subsequently appeared in court and testified in person. Plaintiff also offered a deposition which was admitted over objection. The Court found the allegations true, and sentenced the defendant to pay a fine of \$50 and costs. The costs were taxed as in an ordinary civil suit against defendant’s objection.

Held: (1) That the Court had no power to proceed to a trial and judgment of condemnation in the absence of the defendant. (2) That the accused was entitled to be heard. (3) That it was error to admit the affidavit. The accused had the right to be confronted by the witnesses in open court and to cross-examine them.

6. That the enforcement of the said order would be a deprivation of the rights of the appellant to his liberty and his property without due process of law, in violation of his constitutional rights, particularly those secured to him under the Fourteenth Amendment of the Constitution of the United States.

The rule to show cause was, as appears from the alleged affidavit of service, never served so as to operate as a legal notice to the appellant. It is settled by the final authority on such questions that the service upon Staley, who is shown by the same affidavit to be a resident of the State of Pennsylvania, "at his place of residence, 5729 Commerce street, in the City of Philadelphia," was void and of no effect. Such service is a nullity and affords no foundation for any judgment, order or decree of a personal nature against him.

What is notice to the party is settled beyond question by a case never since disputed or qualified,

Pennoyer v. Neff, 95 U. S. 714,

which decided that a personal judgment against a non-resident defendant is invalid in an ordinary civil case where the service of process had been made either by publication or beyond the jurisdiction of the State.

The authority of *Pennoyer v. Neff* and the effect of the Fourteenth Amendment to change the law which gave to judgments entered by virtue of some statute an intra-state authority, were expressly recognized in the courts of this State.

Edwards v. McClave, 55 N. J. Eq. 158;

Elsasser v. Haines, 52 N. J. L. 10, 15.

In the latter case Chief Justice Beasley said that whereas formerly a judgment recovered against a non-resident and without personal service within the State "was sometimes held to be enforceable in such State * * * but now, by force of the addition to the Federal Constitution just adverted to, such judgment would be of no legal effect either at home or abroad."

Supporting the same rule are many cases, among which may be cited:

Exchange Bank v. Clement, 109 Ala. 280, 19 So. 817;

Cudabac v. Strong, 67 Miss. 709, 7 So. 544;

Clark v. Hammett, 27 Fed. 339;

Remer v. Mackey, 35 Fed. 86, S. C. 54 Fed. 432;

Kimmare v. Houston, &c., Ry., 76 Tex. 695.

7. That the act complained of, and which the said order assumes to punish as a contempt, was alleged and admitted by the party applying for the order to have been committed outside of the State of New Jersey and of the jurisdiction of the Court. The service of the rule to show cause was, therefore, a nullity and conferred no jurisdiction; there was no law to authorize it and the process of the New Jersey Court could not be enforced beyond the limits of the State.

Elizabethtown Saving Instn. v. Gerber, 34 N. J. Eq. 130.

The same invalidity attaches to the original process in this cause. The validity of the order for the violation of which the contempt is charged may be questioned, and if it is void for want of jurisdiction it is a good defence.

Dodd v. Una, 40 N. J. Eq. 672;

Forest v. Price, 52 N. J. Eq. 16.

The disobedience of an order which the Court was without jurisdiction to make is not contempt.

State v. Nathans, 49 S. C. 199, 203,
quoting Rapalje on Contempts.

8. The law of this State has been uniform and the decisions without conflict that "inability to comply with an order of the Court is a sufficient excuse for failing to do so and a good defence in proceedings for contempt.

In re Brewster, 15 N. J. L. J. 360;
State v. Gulick, 17 N. J. L. (2 Har.) 435;
Den v. Hendrickson, 18 N. J. L. (3 Har.)
366;
Pa. R. R. et al. v. Thompson, 49 N. J. Eq.
318;
Walton v. Walton, 54 N. J. Eq. 607;
Grand Lodge K. of P. v. Jansen, 62 N. J.
Eq. 737;
Jenkins v. State, 60 Neb. 205, 82 N. W. 622;
Herrington v. Casseni, 82 Ill. App. 594;
In re Davison, 143 Fed. 673;
State ex rel. McLean, v. Dist. Ct., 37 Mont.
485, which is annotated in 15 Eng. &
Am. Anno. Cases, 941.

In the case at bar, as by reference to the record furnished by the Vice-Chancellor will appear, the failure of the appellant, Staley, to pay a fine of fifty dollars, which he was sentenced to pay in another case, was stated as the reason for holding him for contempt in the case at bar, notwithstanding that in his record the Vice-Chancellor states "that he inquired of his counsel if the fine and costs had been paid, to which his counsel replied that Staley had not paid his fine because he could not raise the money * * *," which clearly brings the case within the rule settled by the cases just cited.

Respectfully submitted

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