Clerk's Table

NEW JERSEY

Court of Errors and Appeals.

Between—

THE ATTORNEY-GENERAL, ex rel,
EASTON & MCMAHON,
Appellants,

and

THE NEW YORK & LONG BRANCH
RAILROAD COMPANY, et als,
Appellees.

} *On Appeal, &c.*

The information and bill for injunction in this cause was filed on the 24th day of May, A. D. 1873, the nature and object of which appear in the opinion of the Chancellor, reported in IX, C. E. Green, page 49.

Thereupon, the following rule to show cause and restraining order were made and filed.

(The Chancellor delivered his opinion on the 2nd day of July, 1873.)

COURT OF ERRORS AND APPEALS, IN THE LAST RESORT IN ALL CAUSES.

Between—

THE ATTORNEY-GENERAL, ex rel, JAMES T. EASTON AND JAMES McMAHON, *Appellants.* } *On Rule to Show Cause.*

and

THE NEW YORK & LONG BRANCH RAILROAD COMPANY, et als, *Appellees.* } *Petition of Appeal.*

To the Honorable the Court of Errors and Appeals, in the last resort in all causes:

The humble petition of James T. Easton and James McMahon, the appellants in the above stated cause, respectfully show that your petitioners find themselves aggrieved by a final order and decree, made in the Court of Chancery of New Jersey, by his honor Theodore Runyon, Chancellor of New Jersey, bearing date the thirteenth day of November, in the year eighteen hundred and seventy-five, wherein the said James T. Easton and James McMahon were complainants, and the said The New York and Long Branch Railroad Company, Edward G. Brown, H R. Campbell and John B. Campbell were defendants, in this respect, to wit: that said order or decree adjudges and declares that the injunction bond filed, and granting a rule to show

cause why an injunction should not issue, and restraining the defendants from proceeding with certain works in the meantime, should be delivered by the Clerk of the Court of Chancery to the solicitor of the said Edward G. Brown, H. R. Campbell and J. B. Campbell, to be prosecuted.

And your petitioners humbly appeal from the said order and decree, which orders and decrees as aforesaid, upon the ground that the same is erroneous, for that the Court of Chancery has not decided that the said complainants were not equitably entitled to the said restraining order or injunction at the time the same was granted.

Your petitioners therefore pray that the said order and decree of the said Chancellor may be reversed, set aside, and for nothing holden.

And that your petitioners may have such relief in the premises as to the honorable Court shall seem meet.

JOHN C. BESSON,
Solicitor for and of Counsel with Appellants.

RULE TO SHOW CAUSE, &c.

In Chancery of New Jersey.

Between—

THE ATTORNEY-GENERAL OF THE STATE OF NEW JERSEY AT THE RELATION OF JAMES T. EASTON, et al, AND JAMES T. EASTON & JAMES MCMAHON, *Complainants,*

and

THE NEW YORK & LONG BRANCH RAILROAD COMPANY, et als, *Defendants.*

On Information, and Bill for Injunction and Relief.

Upon reading and filing the information and bill in the above stated cause, and the affidavits thereto annexed, on motion of John C. Besson, solicitor for and of counsel with the complainants, on this twenty-fourth day of May, in the year eighteen hundred and seventy-three, It is ordered, that the said defendants do show cause before this Court, at the State House at Trenton, on the third day of June, eighteen hundred and seventy-three, at eleven o'clock in the forenoon of said day, why a writ of injunction should not issue out of this Court, commanding and enjoining the said defendant com

pany, their officers, agents, servants, contractors, and all other persons claiming to act under authority of said company, from proceeding further in the erection of a bridge across the Raritan Bay, from South Amboy to Perth Amboy, from and to any other points across said bay, and from driving any more piles, or placing any more obstructions in said bay and rivers, according to the prayer of said information and bill.

And it is further ordered, that in the meantime the said defendant company, their officers, agents, servants, contractors, and all other persons acting or claiming to act under authority of said defendant company, do desist and refrain from proceeding further with the work in the construction of a bridge across the Raritan bay or river, from Perth Amboy to South Amboy, and to desist and refrain from driving any more piles in said bay or river, and from doing any other act or thing in and about the construction of said bridge to obstruct the free navigation of said bay or river.

And it is further ordered, that a copy of this rule, together with a copy of the said injunction and bill, and the affidavits thereto annexed, be served on the said defendant company, at least six days before the day hereinbefore mentioned and appointed for the said defendants to show cause as aforesaid.

Which service may be made by serving the same personally on John Taylor Johnson, a director of said company, or on Benjamin Williamson, a director of said company, or by leaving the same at the residence of either of the persons last mentioned. This order is not to take effect until the complainants shall have filed, in the office of the Clerk of this Court, a bond in the penalty of ten thousand dollars, under the 46th rule of this Court,

approved as to form and sufficiency of sureties, by William S. Whitehead, Esq., or Staats S. Morris, Esq., Masters of this Court.

THEODORE RUNYON,
Chancellor.

INJUNCTION BOND.

KNOW ALL MEN BY THESE PRESENTS, That James T. Easton and James McMahon, of the city, county and State of New York, and Alfred L. Dennis, of the city of Newark, in the county of Essex and State of New Jersey, are held and firmly bound unto The New York and Long Branch Railroad Company, Edward G. Brown, H. R. Campbell and J. B. Campbell, in the sum of ten thousand dollars, lawful money of the United States of America, to be paid to the said The New York and Long Branch Railroad Company, Edward G. Brown, H. R. Campbell and J. B. Campbell, or to their certain attorney or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the twenty-fourth day of May, in the year of our Lord one thousand eight hundred and seventy-three.

Whereas, The Honorable Theodore Runyon, Chancellor of the State of New Jersey, hath made an order in a certain cause wherein James T. Easton and James McMahon are complainants, and the above named The New York and Long Branch Railroad Company, Edward G. Brown, H. R. Campbell and J. B. Campbell are defendants, that the defendants show cause before him why an injunction shall not issue to restrain the further erection of a bridge across the Raritan river or bay, between Perth Amboy and South Amboy, according to the prayer of the bill in said cause, and in the meantime restraining the further erection of said bridge, as by said order bearing date May 24, 1873, will, among other things, fully appear.

Now, therefore, the condition of the above obligation is such that if the above bounden, James T. Easton and James McMahon, shall well and truly pay, or cause to be paid, unto the said The New York and Long Branch Railroad Company, Edward G. Brown, H. R. Campbell and J. B. Campbell, such damages as they or any of them may sustain, by reason of the restraining part of said order, if the Court shall eventually decide that the complainants are not equitably entitled to such restraining order, then the above obligation to be void, otherwise to remain in force.

Executed in the presence of Francis B. Stevens.

A. L. DENNIS, (L. S.)
JAS. T. EASTON, (L. S.)
per JAS. MCMAHON, *Atty.*
JAS. MCMAHON, (L. S.)

SAMUEL H. CARY,
For Easton and McMahon.

A true copy.

H. S. LITTLE,
Clerk.

IN CHANCERY OF NEW JERSEY.

Between—

THE ATTORNEY-GENERAL, ex rel, JAMES T. EASTON, *Complainant*, *and* THE NEW YORK & LONG BRANCH RAILROAD COMPANY, *Defendants.*

On Rule to Show Cause why an Injunction should not Issue, &c.

This cause coming on for hearing on a rule to show cause why an injunction should not issue to enjoin the defendants from erecting a bridge over the Raritan at Perth Amboy, now in course of construction, and the matter having been argued at length by Mr. Williamson and Mr. Frelinghuysen in opposition to the motion, and by Mr. Attorney-General Gilchrist and Mr. McCarter in support of the same, on the pleadings and affidavits of both sides, and the Chancellor, after argument, having taken time to consider the same, and being of opinion that the injunction prayed for should not be granted, and that the said rule should be discharged.

It is now, on this thirtieth day of June, eighteen hundred and seventy-three, ordered, by Theodore Runyon, Chancellor, that the said rule be discharged, and the motion for injunction denied, with costs.

On motion of B. Williamson, solicitor and of counsel for defendants.

THEODORE RUNYON,
Chancellor.

IN CHANCERY OF NEW JERSEY.

Between—

THE ATTORNEY-GENERAL, ex rel, &c.

Complainants,

and

THE NEW YORK & LONG BRANCH RAILROAD COMPANY, et als,

Defendants.

This cause coming on to be heard at the last regular term of this Court of Chancery, held at the State House in the city of Trenton, before the Chancellor, in the presence of the Counsel for the respective parties, and the pleadings, depositions, exhibits and proofs being read, and the arguments of the respective Counsel heard and considered, and the Chancellor having taken time to advise thereon, It is on this thirtieth day of December, eighteen hundred and seventy-three, it appearing to the Chancellor that the complainant is not entitled to the relief sought and prayed for by him in his said bill of complaint, It is ordered, adjudged and decreed that the complainants' bill be and the same is hereby dismissed, with costs.

THEODORE RUNYON,
Chancellor.

IN CHANCERY OF NEW JERSEY.

Between—

THE ATTORNEY-GENERAL, ex rel, &c.,

Complainants,

and

THE NEW YORK & LONG BRANCH RAILROAD COMPANY, et als,

Defendants.

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On application on behalf of Edward G. Brown, H. R. Campbell and J. B. Campbell, defendants in the above stated cause, It is on this eighth day of February, eighteen hundred and seventy-five, on motion of Benjamin Williamson, of Counsel with said defendants, ordered, that the complainants in this suit show cause before the Chancellor, on Monday, the twenty-second day of February, instant, at the Chancellor's Chambers at Newark, 20 why the bond given by the complainant' in this suit should not be delivered to the said defendants' solicitor to be prosecuted. And it is further ordered that a copy of this order be served on the said complainants or their solicitor, within five days from the date of this order.

THEODORE RUNYON,
Chancellor.

IN CHANCERY OF NEW JERSEY.

Between—

THE ATTORNEY-GENERAL AT THE RELATION OF EASTON AND McMAHON,

and

THE LONG BRANCH RAILROAD COMPANY, BROWN & CAMPBELL,

Defendants.

Order.

Application having been made in this cause on behalf of Brown and Campbell, two of the defendants, for leave to take from the files of this Court the bond required from the complainants, on the issuing of the restraining order on the motion for injunction, and to have the damages alleged by said Brown and Campbell to have been sustained by them, assessed by this Court.

It is now ordered, that the whole matter of the right of Brown and Campbell to said bond, and whether they are entitled to have any damages assessed, be referred to the Vice-Chancellor, to be proceeded on and determined by him, according to the rules and practice of this Court.

Dated March 8, 1875.

THEODORE RUNYON,
Chancellor.

IN CHANCERY OF NEW JERSEY.

Between—

THE ATTORNEY-GENERAL, ex rel, JAMES T. EASTON, et al, *Complainants*, and THE NEW YORK & LONG BRANCH RAILROAD COMPANY, et al, *Defendants*.

On Rule to Show Cause.

Amended Order of Reference.

Application having been made herein on behalf of Edward G. Brown, H. R. Campbell and J. B. Campbell, three of the defendants, for an order that the injunction bond given in this cause be delivered to the solicitor of the said defendants for prosecution.

It is ordered, that the said application and the rule to show cause granted thereon, be referred to the Vice-Chancellor, to be proceeded on and determined by him, according to the rules and practice of the Court.

Dated July 26, 1875.

THEODORE RUNYON,
Chancellor.

IN CHANCERY OF NEW JERSEY.

Between—

THE ATTORNEY-GENERAL, ex rel, JAMES T. EASTON, et al, *Complainants*, *and* THE NEW YORK & LONG BRANCH RAILROAD COMPANY, et al, *Defendants*. } *On Rule to Show Cause.*

On reading the rule to show cause herein, which was duly referred to the Vice-Chancellor, and on hearing Counsel thereon, and the Vice-Chancellor, after advisement had, being of the opinion, and having advised accordingly, that the defendants, Edward G. Brown, H. R. Campbell and J. B. Campbell, are entitled to have the injunction bond filed in this cause, delivered to their solicitor for prosecution, on obtaining the consent of the other obligees therein named.

It is thereupon, on this thirteenth day of November, in the year eighteen hundred and seventy-five, ordered, that on filing the consent of The New York and Long Branch Railroad Company (the other oblitees to said injunction bond), the same be delivered by the Clerk of this Court to the solicitor of the defendants, Edward G. Brown, H. R. Campbell and J. B. Campbell, to be prosecuted.

THEODORE RUNYON,
Chancellor.

I respectfully advise the foregoing order.

A. V. VAN FLEET,
Vice-Chancellor.

EASTON AND MCMAHON,
v
THE NEW YORK & LONG BRANCH RAILROAD COMPANY, et als.

On Order to Show Cause.

Mr. JOHN W. TAYLOR,
For motion.

Mr. JOHN C. BESSON,
Contra.

THE VICE CHANCELLOR. The defendants, Brown and Campbell, ask for the delivery to them of the bond given by the complainants, pursuant to the forty-sixth rule of this Court, on procuring the injunction granted in this cause, that they may sue on it at law to recover the damages they claim to have sustained in consequence of the allowance of the injunction. The injunction was dissolved by the Chancellor for the reasons stated in his opinion, reported in 9 *C. E. Green* 49. The bond was executed by a surety as well as the complainants. The condition conforms to the requirements of the forty-sixth rule, except the words "such damages to be ascertained in such manner as the Chancellor shall direct," are omitted. This omission, it is said, deprives this Court of all power over the surety, and leaves intact his right to have his liability determined by suit at law, with the privilege of trial by Jury. It is contended, the question of liability on the bond is purely a matter of common law cognizance, and a Court of Equity cannot acquire jurisdiction of it, except by

the consent of the obligers, expressed in the bond, or in some other appropriate mode. This view would seem to have the support af two adjudications entitled to great respect, Bein *v.* Heath, 12 How, 86 ; Merryfield *v.* Jones, 2 Curtis, C C., 306. Judge Curtis, in the case last cited, says : "It is not incident to the general powers of a Court of Equity to proceed against the principal and sureties on an injunction bond, and enforce the payment of damages secured by its condition. * * * I am clearly of opinion that, aside from positive legislation, a Court of Equity does not afford a remedy on such bonds." And even where the plaintiff and his surety undertake to abide by such order respecting damages as the Court may make, it seems the question of their liability may be submitted to the judgment of a Common Law Court, Novello *v.* James, 31 Eng., L. & E. 280. The injunction in this case, on motion to dissolve, was continued, the plaintiff undertaking to abide by any order the Court might make as to the payment of compensation to the defendant, for any damages which might be sustained by him in case the plaintiffs title should ultimately fail. Both the Lord Justices who heard the appeal held, the defendant had a right to have the question what, if any, damages he had sustained determined, either by an officer of the Court of Chancery or by trial at law.

The question, whether the condition of the bond in this case has been broken or not, must be left to the judgment of the Court in which the action on it is to be instituted. If this Court has no power over the surety it should not attempt, as against him, to adjudge whether a cause of action exists or not. That should be left to the determination of the tribunal when the suitor applies for redress.

It is proper to add the question, what will con-

stitute a breach of an injunction bond, with condition framed pursuant to the rule? has recently been considered by the present Chancellor. After enumerating various acts and omissions which will work a breach, he lays down this general rule, by which almost all cases may be accurately tested: "In short, if the application be disingenuous mala fide, or made without due regard to the rights of the Court, or the defendant, the complaint is to be regarded as not having been equitably entitled to the injunction." He had previously shown there were cases where the mere fact of dissolution, even before answer, would not of itself be evidence that the complainant was not equitably entitled to the injunction. Smith *v.* Kuhl, 11 C. E. Green.

In view of this rule, it may be prudent for the obligees, who desire to sue on this bond, to consider whether a breach of its condition can be shown.

If the obligees not joining in this application will consent, I will advise an order directing the delivery of the bond to Brown and Campbell, that they may take such action respecting it as they may be advised is proper. If such consent is not given, the order must be that the Clerk deliver a certified copy of it to the applicants, and that he shall produce the original to be offered in evidence whenever properly required to do so. The original should not be taken from the files without the consent of all the obligees.

N. J. Court of Errors and Appeals.

Between

THE ATTORNEY GENERAL, *ex. rel.*, EASTON & McMAHON,
Appellants,

and

THE NEW YORK AND LONG BRANCH RAILROAD COMPANY, *and al.*,
Respondents.

On Appeal, &c.

POINTS ON MOTION TO DISMISS.

I.

The order from which the appeal was taken, is not appealable.

It merely directs that the injunction bond taken in the cause below, "*be delivered by the Clerk,* —— —— *to the solicitor of the defendants,* —— ——, *to be prosecuted.*"

It does not pass upon the *validity* of the bond, or the *right to prosecute* the same, nor does it even *authorize* a prosecution.

It simply directs a *transfer* of its *custody*, from one person to another.

1. If the right of the obligees to the custody of the bond was not absolute, it was certainly a *matter of pure discretion* with the Chancellor to authorize its actual delivery to them.

2. The appellants cannot possibly be "*aggrieved*" by the order, because,

(1.) No definite rule of law or equity appears to have been violated thereby.

Rogers vs. *Hosack's Exrs.*, 18 Wend. 319.

Garr vs. *Hill*, 1 Halst., Ch. 639.

Bank of Metropolis vs. *Sprague*, 6 C. E. Gr., 458.

(2) The order does not *touch the merits* of any controversy, nor *affect the legal or equitable rights or interests* of the appellants.

Camden & Amboy R. R. Co. vs. *Stewart*, 6 C. E. Gr., 484.

Atty. General vs. *Paterson*, 1 Stock., 624.

Coryell vs. *Holcombe*, Id. 650.

Matter of Reeve, 34 N. Y., 359.

The merits of any controversy in the cause wherein the order was made, were disposed of by the final decree therein.

The merits of any controversy as to the validity of the

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Appellees.

On Appeal.

Points relied on by the appellants for the reversal of the order permitting the appellees to take bond from files of the Court of Chancery for prosecution.

I.

The bond in this case was required and taken by the Chancellor, pursuant to the 46th rule of the Court of Chancery, on granting a rule to show cause, and the restraining order as set forth in the case (page 4).

(*a.*) By the express terms of the rule the taking of the bond in the first instance is entirely at the discretion of the Chancellor.

(*b.*) The bond may be regarded as an escrow until the Chancellor has "eventually decided that the complainant was not equitably entitled to such injunction."

The defendants have no right to the bond, un-

less the Chancellor decides there has been a breach of the condition.

And no suit can be brought without leave of the Court.

Higgins v. Allen, 6 *How, Pr.* 38.

II.

The mere fact that the injunction is dissolved or the bill dismissed is not evidence that the complainant was not equitably entitled to the injunction or restraining order.

Smith v. Kuhl, (*not yet reported,*) *N. J. Eq. Reports.*

The Chancellor has never decided that the complainants (the appellants) were not equitably entitled to the restraining order referred to in the condition of the bond.

III.

The motion to take this bond from file, with leave to prosecute, is precisely the same as would have been a motion to refer to a Master to ascertain the damages, if the bond had contained the words "such damages to be ascertained in such manner as the Chancellor shall direct." A suit at law on the bond is only another mode of assessing the damages.

Before the right to claim an assessment of damages can be asserted, it must appear that the Court has decided that the complainants "were not," that is, were not at the time they applied for and obtained the injunction or restraining order, entitled thereto.

2 *Barb. Ch. Pr., page* 622. (*2nd Rev. Ed.*)
Shearman v. New York Central Mills, 77 *How, Pr.* 269.
Weeks v. Southwick, 12 *How, Pr.* 170.