

VOL. 210 (1896)

New Jersey Court of Errors and Appeals.

Between—

THE PENNSYLVANIA RAILROAD COMPANY AND EDWARD F. BROOKS.

Appellants,

AND

THE NATIONAL DOCKS AND NEW JERSEY JUNCTION CONNECTING RAILWAY COMPANY,

Respondents.

On Appeal from
Chancery in
Contempt Proceeding.

Brief of Richard V. Lindabury for Appellants.

Against the order appealed from in this cause, I make the following points :

I.

That the effect of an appeal from a final decree in Chancery under the 150th Chancery Rule is to stay all proceedings on the decree appealed from, provided the appeal is taken within ten days, unless the Chancellor shall otherwise direct.

This would seem to result, as of course, from the plain reading of the rule. It declares that if an appeal is taken within ten days after a final decree is filed "process shall not issue on said decree," &c.

Now, there is no way that the final decree or judgment of any Court can be enforced except by process. After a final judgment is entered or decree passed nothing remains to be done in the cause except to issue process for its enforcement. Therefore it must be that a stay in process is in every case, and of necessity, a stay in proceedings.

Moreover, unless the rule effects a stay of proceedings it is difficult to attribute it to any force whatever.

In the Court below it was contended that although the rule may stay proceedings in cases where it operates, yet that its operation is confined to cases where the final process is a writ of execution.

There seems to be no force in this contention derivable either from the words used or from the reason of the thing. "Process" is certainly a broader term than "execution" and embraces every writ by which a court enforces its decrees. It is defined in Anderson's Law Dictionary as follows: "Something issuing out of a court or from a judge; a writ of any nature." "In a large sense it comprehends the whole proceeding after the original writ and before judgment, but generally refers to the writs which issue out of any court to bring the party to answer, or for execution. It proceeds or goes out upon former matter, either original or judicial."

And what reason can there be for staying one kind of process and not another? The object of any stay is to preserve the *status quo* pending appeal, and that is as necessary when it might be changed under one form of writ as under another.

The first appeals from the Court of Chancery in this State were taken under the Act of 1799. See *Griffith's Law Reg.*, Vol. 4.

No rule, however, staying proceedings on appeal seems to have been promulgated until 1817. September 8 of that year the following rule was published:

"37. In all cases of appeal if the party who thinks himself aggrieved files with the Clerk of this Court a caveat signed by counsel against the recording and

signing of the final sentence or decree within ten days after it shall have been pronounced, it shall prevent all proceedings upon the said decree pending the said appeal without the leave of this Court or of the Court of Appeals and of Errors for that purpose first obtained."

See first book of rules in Chancery.

The failure to adopt a rule on this subject at an earlier date rendered it probable that here as in New York the ancient English practice was followed.

That and the New York practice were described by Chancellor Walworth in *Hart v. Mayor, &c.*, 3 Paige, 381, 383, as follows: "To understand the meaning of the several provisions of the revised statutes relative to the stay of proceedings pending an appeal, it may be necessary to inquire what was the former law and practice of the courts on this subject, and what were the evils intended to be remedied by these legislative provisions. It will be recollected by those who have had occasion to look into the history of the jurisdiction of the House of Lords in England, relative to appeals from the Court of Chancery, that their jurisdiction was for a long time contested, not only by the House of Commons, but by several distinguished English judges. And the learned Chief Justice Hale wrote a very elaborate treatise for the purpose of showing that the lords could not rightfully exercise such a jurisdiction. In this struggle to obtain or preserve jurisdiction in case of appeals, it will be found, on examination, that very little regard was paid to the rights of suitors, or of their counsel; some of whom were heavily amerced, and even imprisoned, for questioning the jurisdiction of the lords, or for refusing to appear as counsel in that court. During this contest, it was a matter of course that the lords, for the purpose of sustaining the jurisdiction which they claimed, should prohibit the respondents from taking any steps in the cause, in the Court of Chancery pending the appeal; whatever injury he might sustain by the delay. Hence it became the law of the

appellate court, that the mere presenting of an appeal to the House of Lords, suspended all proceedings whatever in the court below. And so far was this principle carried, that as late as 1772 it was supposed that an appeal had the effect of totally suspending the jurisdiction of the Lord Chancellor as to the whole suit, until the decision of the Lords on the appeal. But in the case of *Lord Pomfret v. Smith*, which came before Lord Apsley at that time, he decided that his jurisdiction was suspended only as to the matter appealed from; but that it was not totally suspended so as to prevent a proceeding as to any other matter in the cause. (Palmer's Pr. H. of L., 9.) The jurisdiction of the Lords being finally established, and having remained for a long time undisputed, they saw the necessity of permitting the Court of Chancery, during the recess of parliament, to take such proceedings in the cause, pending the appeal, as the Lord Chancellor might deem requisite for the preservation of the rights of the parties. At length this practice became so fully established, that in the case of *Burke v. Brown*, in 1807 (Palmer's Pr. 10, 15 Vesey, 184), the Lords decided that an appeal did not stay any of the proceedings, even upon the point appealed from, without an express order of the Appellate Court; unless the Lord Chancellor, in the exercise of a judicial discretion, thought proper to suspend the proceedings wholly or in part pending the appeal. This country having separated from England before this change in the practice had been established, the Courts of this state followed the practice, as settled by Lord Apsley, in 1772, of considering the appeal as a stay of the proceedings upon the point of the appeal. The same reasons, however, which had produced a change in the practice in England caused a modification here, so as to make the appeal only a stay of the proceedings in the first instance, subject to the right of the respondent to apply to the chancellor for leave to proceed notwithstanding the appeal (1 John Ch. Rep., 77; 3 *Idem*, 66). The only difference, therefore, be-

tween the practice here and in England, at the time of the adoption of the revised statute, was, that in England the appellant was compelled to obtain an order to stay the proceedings in the suit as to the matter of the appeal; but here the application came from the respondent, to be permitted to proceed notwithstanding the appeal."

In 1822 our rule was revised and took the form copied in the Chancellor's opinion from Potts' Chancery Precedents. It has ^{not} been materially altered since.

In the revision of 1822 the language of the New York rule on the point in question seems to have been adopted in preference to that of our own rule of 1817.

The New York rule was adopted by Chancellor Lansing in 1806, and reaffirmed by Chancellor Kent in 1814 (Gould's Chancery Rules). It reads as follows:

"36. That ~~an~~ appeal regularly entered before a decree is perfected, shall prevent the issuing of process thereon until the appeal be heard and determined."

The word "process," as used in the New York rule, was construed by Chancellor Kent, in *Green v. Winter*, 1 John., Ch. 77, as synonymous with "stay of proceedings." He said:

"I believe the practice in this Court has always been according to the more ancient opinion in the English Chancery, and the appeal has been considered as a stay of proceedings; this appears also to have been the understanding of this Court, as declared in the 35th, 36th and 37th rules of June, 1806. The 36th rule explicitly declares that an appeal shall prevent the issuing of process upon the decree."

Vice Chancellor Bird, in *Osborn v. Williams*, 13 Stew., 490, took the same view, and expressly held that the rule in question covers the case of an injunction issued upon final decree.

This seems also to have been the conclusion of the Chancellor in this case, as is indicated by his opinion at line 26, on page 30. The statutes he refers to will

all be found to "stay proceedings" by their very terms, and to cover injunction decrees.

Reehle v. Kuelings, 11 Stew., 84, is relied upon as an authority for excepting injunction process from the operation of the rule. But it will be noticed that the Chancellor did not consider the question of practice in that case at all. He dealt with the question of whether or not the decree should be stayed, simply upon its merits, regardless of how it arose.

II.

That the decree appealed from was mandatory in its effect, and required the defendants to yield up to the complainant the possession of lands of which they were then in the occupancy under a claim of right, and it was for failure to do this and for resisting the complainant in an attempt to take possession under color of the decree that they were adjudged guilty of contempt.

That the decree appealed from is mandatory in its character and was intended to effect a change of the possession of real estate, is shown by the second paragraph of the Chancellor's opinion. He says:

"The design of such injunction is to give the complainant possession of the route of crossing for the purpose of constructing its tunnel in the manner sanctioned by the decree. It is restrictive in that it forbids interference, and it is mandatory in effect, in its requirement that maintenance of existing obstructions in the shape of cars upon the tracks to be crossed shall cease."

And that it was for failure to obey the mandatory

requirement of this decree that the Chancellor adjudged the appellants to be guilty of contempt, is sufficiently shown by the fourth paragraph of his opinion. He there says :

“ In answer to this application they” (appellants) “insist that the appeal operates as a *supersedeas* of the injunctive provisions of the decree, so that pending the determination of the appeal no movement may be made by the complainant under the protection of the decree, and they are not restrained from resisting any attempt upon the complainant’s part to prosecute the construction.”

III.

That the effect of a stay of process, or proceedings, upon a mendatory injunction, is to completely suspend its operation and disentitle the party holding it to any protection thereunder in an attempt on his part to change the status quo.

This, so far as observed, is the doctrine of all the cases. I cite the following :

State v. Chase, 41 Ind., 356 (1872).

This was a case where a defendant had taken an appeal from an injunction decree under a statute which made such an appeal a *supersedeas*. After appeal he proceeded to do the acts which he was enjoined from doing, and the question was whether or not he was punishable as for contempt. In holding that he was the Court said :

“ But it is contended that the appeal stays proceedings upon the order. This is true, but not in such sense as to allow the party enjoined to do the act which

he has been forbidden by the injunction to do. Strictly, in most cases there are no further proceedings upon an injunction. * * * If the order be for the payment of money, or for the delivery of the possession of real property, for instance, there is something to be done by the party against whom the order is made, and in such cases the appeal does stay proceedings upon the order. The Court which made the order cannot, in the one instance, compel the payment of the money, or in the other, the delivery of the possession of the land, during the time of the stay. It is to such cases that the provision for the stay of proceedings upon the order is peculiarly applicable. If the defendant will not observe the injunction, will not refrain from doing the injurious act, and it becomes necessary for the court to enforce obedience to it, in consequence solely of the wrongful act of the defendant, it cannot, in any true sense, be said that this is a proceeding upon the order. It is the defendant who is attacking the order and refusing to allow the matter to remain as when the appeal was taken. The Court is simply compelling him to respect the order and allow it to stand as made."

*New Brighton, &c., R. R. Co., v. The Pitts-
burgh &c. R. R. Co., 105 Pa., 13 (1884.)*

In this case there was a contest between two railroad companies over a right of way, the question being, which of them was prior in locating its route. The Court decided against one of them, and ordered an injunction. The defeated party appealed, and gave a bond upon which it was granted an order of *supersedeas* under the Pennsylvania Statute. It then proceeded with the work of building its railroad. For this an attachment for contempt was issued against its officers and workmen, and the question was whether or not the parties attached were guilty. The Court said :

“ The object of the order was to make the appeal a *supersedeas*, and we have no doubt it was effectual for

that purpose; but while the appeal was so taken as to make it a stay of all proceedings for the enforcement of the decree, it by no means follows that the authority of the Court below, in other matters that might arise pending the appeal, was either superseded or suspended. The purpose of staying proceedings was not to oust the jurisdiction of the Court below, *but preserve the status of the respective companies as it was before and at the date of the decree. So far as they were then respectively in actual possession of portions of the disputed location, exercising acts of ownership thereon, they each, as against the other, had a right to continue in the undisturbed enjoyment thereof until the appeal was determined*"

Bullion, Beck & Champion Min. Co. v. Eureka Hill Min. Co., 13 Pac. Rep. 174 (Sup. Ct. of Utah, 1887.)

In this case an injunction was awarded on final hearing to restrain the defendant from preventing the complainant from taking possession of a certain mining lode adjudged to belong to the complainant but then in the possession of the defendant. The defendant took an appeal and entered into a *supersedeas* bond, and refused to render possession of the premises to complainant. For this it was adjudged guilty of contempt and sentenced to pay a fine. An appeal was taken from this latter adjudication and the same was set aside, the Court holding that "the injunction could not be used to eject them (the appellants), and it was no violation of the injunction for appellants to remain as they were when the injunction was granted."

Dewey v. Superior Court et al. (Sup. Ct. Cal., 1889), 22 Pac. Rep., 333.

In this case the Court had awarded an injunction requiring, it was claimed, among other things, that the defendant remove a dam and fill up the mouth of a ditch, and cease to divert the waters of a creek. The defendant took an appeal with a *supersedeas*, and

thereupon refused either to remove the dam or to fill up the ditch. For this he was adjudged guilty of contempt in the court below. On appeal, the adjudication of contempt was set aside. The Court, after deciding that the decree did not require the defendant to remove the dam and fill up the ditch, proceeded as follows :

“Again, even if, by implication, the original injunction required the defendant to perform the act required of him by the last-named order, the Court had no jurisdiction, at the date of entering said order in the proceedings for contempt, to require him to perform the act, or to punish him for its non-performance. At the date of that order an appeal to this Court had been perfected from the judgment of the Court below, the effect of which was to stay all proceedings for the enforcement of the judgment, except that of enforcing and punishing for a violation of the *prohibitory* injunction alone. An appeal, perfected as this was, under Section 949, Code Civil Proc., stayed all proceedings upon every part of that judgment, “commanding some act to be done.” *Mining Co. v. Fremont*, 7 Cal., 130 ; *Bliss v. Superior Court*, 62 Cal., 544. A prohibitory injunction remains in full force, pending such an appeal, and the Court below may enforce obedience thereto; but a mandatory injunction is stayed by the operation of such appeal, the object of the rule in both cases being to preserve the *status quo*. Otherwise the result of the final adjudication might often be a barren victory. During the pendency of the appeal, the Court below could do no act which did not look to the holding of the subject of the litigation just as it existed when the decree was rendered. In the exercise of its authority, it was empowered to punish, as for contempt, for the violation of any provision of the injunction, where the parties were not allowing the property to remain as it was at the date of the decree. *Mining Co. v. Mining Co.*, 13 Pac. Rep., 174, citing *Hovey v. McDonald*, 109 U. S., 161, 3 Sup. Ct. Rep., 138, and other cases. So in this case the defendant may be punished for the actual diversion of the waters of

Mariposa Creek, pending the appeal, if done by himself, his agents, servants or employees, or by his procurement to the injury of plaintiff ; but he cannot be punished for failure to remove the dam or fill up the ditch : *First*, because no such mandate is found in the judgment for injunction ; and, *second*, because if there was such a mandate its execution would be stayed by the appeal, which has been perfected.”

Elliot v. Whitmore (Sup. Ct. of Utah, 1894.),
37 Pac. Rep., 459.

In this case the primary litigation was over the right to use the water of a certain stream. The complaint alleged that the defendant had taken possession of the stream and diverted it from the complainant. The Court adjudged that the complainant was entitled to 5 cubic feet per second of the water at his head gate, and appointed a commissioner to put a certain box or device in the stream which would secure to the complainant the amount so adjudged to be his due, and enjoined the defendant from interfering therewith. The question was whether or not on appeal from this decree the defendant was entitled to a stay of proceedings? The Court, in adjudging that he was, said :

“ If the judgment or decree from which defendants were seeking to appeal was, in effect, for the delivery of possession of real property, then they were entitled to have the judgment stayed pending the appeal, and it was the duty of the Court to fix the amount of the bond for that purpose. The defendants were in possession of the stream, and the provision in the judgment that the defendants should refrain and desist from taking it was, in effect, a judgment that they deliver it to the plaintiff ; the judgment directed a commissioner to go and turn it over, and deliver it to the plaintiff. An appeal does not ordinarily supersede or suspend an injunction, but this rule is only to preserve the *status quo* of the property at the time the decree is

entered. * * * * If the injunction is mandatory, its effect is to take the subject-matter of the controversy from the possession of one party and give it to the other; the rule has no application. * * * * In the case of *Bliss v. Superior Court*, McKee, J., speaking for the Court, says: 'It is only of orders or judgments which command or permit some act to be done that a stay of proceedings can be had.' And, in the case of *Mining Co. v. Fremont*, the Court points out the distinction between mandatory and prohibitory judgments and orders. In the case at bar, the defendants were in the possession at the time the decree was entered. The effect of the decree was to take the property in dispute from them, and deliver it to plaintiff. In fact, a commissioner was directed to make the delivery. The order appealed from should be reversed and set aside; and as the defendants have perfected their appeal, so far as they could, which is now pending in this court, the cause should be remanded to the court below, with instructions to fix the amount of *supersedeas* bond on appeal from the judgment."

Nor do the cases cited by the Chancellor on this point lay down a different rule.

The Sixth Ave. R. R. Co. &c., v. Gilbert Elevated R. R. Co., 71 N. Y., 430 (1877), was a case of violation of a *prohibitory* injunction after appeal and *supersedeas*. The defendant was adjudged guilty of contempt. The syllabus succinctly states the views expressed by the Court as follows: "The judgment, so far as it enjoins the defendant, needs no execution; it acts directly without process, and the stay only operates to prevent action on the part of plaintiff." The Court says that the appeal "did not affect the validity or effect of the judgment pending the appeal, so far as it bore upon and restrained the action of the defendant, its servants or agents. It did not

absolve them from the duty of obedience, and permit them to do that which the judgment absolutely prohibited, and the doing of which would, as adjudged by the Court, cause irreparable mischief to the plaintiff, or an injury which could not certainly be compensated in damages."

The cases of *Gardner v. Gardner*, 87 N. Y., 18, and *Genet v. Del. & Hud. Canal Co.*, 113 N. Y., 475, are of the same character and simply follow the *Sixth Avenue Railroad case*. In both of them the injunctions violated were simply prohibitory.

Central Union Tel. Co. v. Board of Com'rs, &c., (1887) 10 N. E. Rep., 912, 110 Ind., 203, is also a case where a party was adjudged guilty of contempt for violation of a *prohibitory* injunction after appeal taken with a *supersedeas*. The Court said: "The effect of a *supersedeas* is to restrain the appellee from taking affirmative action to enforce his decree, but it does not authorize the appellant to do what the decree prohibits him from doing." It cites with approval the *Sixth Avenue Railroad case* above referred to, and then quotes from an opinion of Chancellor Walworth in *Graves v. McGuire*, 6 Paige, 379, the following: "The effect of an appeal, after the proper steps have been taken to render it a stay of proceedings upon the order or decree appealed from, is to leave the proceedings in the same situation as they were at the time of perfecting such appeal, but not as they were before the order or decree appealed from was entered." It also quotes *Robinson v. Davidson*, 14 Minn., 554, as holding, regarding the effect of an appeal, the following: "It operates to stay or suspend the proceedings which may have been taken at the time the appeal is perfected, in the condition in which they then exist, and prevent any further step or proceeding on the judgment or matter embraced therein."

Hawkins v. State (1890), 26 N. E. Rep., 43, 126

Ind., 296, was a case where the defendant was found guilty of contempt for violating what appears to have been an order for a prohibitory injunction. It does not appear that an appeal had been taken in the cause, and the conviction turned upon the question of whether or not the defendant had notice of the injunction order.

State ex rel., Busch v. Dillon (1888), 8 S. W. Rep., 781; 96 Mo., 56, was also a case where a defendant was convicted of contempt for violating a *prohibitory* injunction, notwithstanding appeal and *supersedeas*. The Court said: "The appeal bond given operates as a *supersedeas* only on the process of execution; it *suspends the performance of acts commanded to be done*. The appeal operates on the judgment as a final determination of the rights of the parties and suspends its finality. * * * Our law regulating practice in injunction and appeals is essentially the same as that prevailing in the Federal Courts, and those of the other States; and the overwhelming weight of authority is that an injunction ordered on final hearing on the merits is not vacated by an appeal from that decree. A stay of proceedings, from its nature, operates only on orders and judgments commanding some act to be done, and does not reach injunctions."

The only remaining case cited by the Chancellor is *Hovey v. McDonald*, 109 U. S., 150. This was a case where a decree directed a receiver *appointed in the cause* to pay certain moneys in his hands to one of the parties. The other party appealed, and gave notice of the appeal to the receiver, who nevertheless on the advice of the Court paid the money over. The decree was afterwards reversed, but the Court held that the receiver was protected in his payment by the decree. This was put upon two grounds:

1st. That the rules relating to *supersedeas* in the District of Columbia where the action arose did not apply to such a case (middle of page 160), and

2nd. That the decree without regard to the supposed *supersedeas* had sufficient intrinsic force and effect to justify the payment and protect the officer in making the same. The case does not seem to touch the question of the effect of a *supersedeas* upon a mandatory injunction.

IV.

If the foregoing points are well taken, it results, of course, that the appellants were not guilty of contempt of the decree appealed from when they ^{replied} registered the attempt of the respondent to take possession of the property of the Pennsylvania Railroad Company by virtue of such decree.

If the appeal operated as a stay of proceedings, and ^{the} a stay of proceedings suspended the force and effect of the decree, so far as it required a change in the status quo, the respondent was wrong and the appellants were right in the contest for which the latter were condemned and the former was acquitted.

I respectfully submit that the order appealed from should be reversed, with costs.

Dated March 12, 1896.

R. V. LINDABURY.

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New Jersey Court of Errors and Appeals

THE PENNSYLVANIA RAILROAD Co.,
Applt.,
and
THE NATIONAL DOCKS & NEW JER-
SEY JUNCTION CONNECTING RAIL-
WAY Co.,
Defts.

On Appeal from
Order adjudg-
ing Contempt.

BRIEF FOR NATIONAL DOCKS, &c., COMPANY, RESPONDENT.

I—Proceedings under a decree are not stayed on appeal by the English practice without an express order of the Court, and there is no New Jersey statute on the subject. The only provision for a stay without an order is found in Rule 150. *Schenck v. Conover*, 2 Beas., 31; *Peer v. Cockeron*, 1 McC., 361, 365.

This rule merely provides that the filing of the appeal within ten days of the final decree shall prevent issuing "process" on the decree without the order of the Court for that purpose. Vice Chancellor Van Fleet stated the rule in terms showing that to his mind the word "process" in this rule means merely "execution," in *Cent. R. R. v. Standard Oil Co.*, 6 Stew., 372, 374; but in *Osborne v. Williams*, 13 Stew., 490, Vice-Chancellor Bird confounds the writ of injunction with the writ of execution, and seems to consider that the filing of the appeal stays the issuing of both writs; but the opinion is manifestly not much considered.

Whatever the effect of the rule on the issuing of writs of injunction is, the question remains—does the appeal suspend the operation of the decree and permit the de-

defendants to violate it, pending the appeal? Clearly it does not, either by its terms or by the practice of any Court of Equity in or out of New Jersey.

It is not at all material whether a writ issued to punish contempt is "process issued on the decree" or not. If we had a statute providing that the Court should issue no process on a decree pending appeal, as in New York, the question would arise, as it did in that State, where it was considered that the power to punish a violation of the decree is not the process which is meant to be stayed. See New York cases below cited. But in New Jersey the question cannot arise, for Rule 150 expressly reserves power to order process on a final decree pending appeal. If, therefore, a contempt proceeding is issuing process on the decree, the power and duty of the Court to issue it is in no wise impaired by the Rule.

In fact, to punish contempt is in no sense to issue process on the decree. It is founded on the acts and conduct of defendants in violation of the decree, on occurrences since the decree was made.

Heinlein v. Cross, 63 Cal., 44.

II.—NOTICE OF DECREE IS BINDING WITHOUT A WRIT:

It is not necessary that the writ of injunction should be issued or served. Knowledge of the decree is sufficient to require obedience. *McNeil v. Garratt*, 1 Cr. & Ph., 98; *Howe v. Willard*, 40 Vt., 654, 663; *Fowler v. Beckman*, 30 Atl. Rep., 1117, 1118; *Haring v. Kaufman*, 2 Beas., 597; *State, Chambers v. Dwyer*, 12 Vr., 95; *Cape May &c. R. R. v. Johnson*, 8 Stew., 422; *Seyfert v. Edison*, 18 Vr., 428, 432.

In *Perrine v. Broadway Bank*, 33 Atl. Rep., 404, an uncertified copy of an order was served, and of course the service was held to be without validity. In the course of the opinion the Chief Justice makes some remarks on the mode of serving writs of injunction. The only application of these dicta is to orders for preliminary injunctions, and all the cases cited relate to such injunctions where the defendants have not usually been brought

into Court by process, and where the only way to officially apprise them of the action of the Court is by a writ. But we are presenting a direct violation of the command of a final decree at the end of a litigated case, signed on notice to defendants. There is no question here of sufficiency of notice, and we show a violation begun on the very day the decree was signed.

Hawkins v. State, 126 Ind., 294, 296.

Daniell says that where an injunction is made perpetual on final hearing, it is not usual to issue a writ (p. 1683); evidently this is because the parties are bound to obey the final decree, for the preliminary injunction ends with the final decree.

It may be noted in passing that ours is not a mere mandatory injunction, and that the bringing of car loads of stone on track No. 1 after the decree was made was an act in direct disobedience of the command to place no cars on track No. 1 until construction of the arch should be completed. Chancellor Runyon considered that an injunction against keeping up water to a certain level in obstruction of railroad tracks, was not mandatory, in Longwood Valley R. R. v. Baker, 12 C. E. G., 166, 170, a contempt proceeding. The final decree unqualifiedly forbids either the placing or maintenance of cars on tracks one, two and three, and it would be a startling exhibition of weakness on the part of the Court if this powerful defendant were allowed to violate this plain decree with impunity. The requisites of notice are that "it must proceed from a source entitled to credit and must inform the defendant clearly and plainly from what act he must abstain." Van Fleet, V. C., 8 Stew., 422, 425.

"All that is required to enable the Court to enforce obedience to its process is that the defendant should have knowledge of the order for the injunction. The Court may punish the violation of the order, though the injunction be not served, if it appear that the defendant knew of its existence." Green, Ch., in Haring v. Kauffman, 2 Beas., 395.

In *ex parte* Langley, 13 Ch. Div. 110, 119, a notice by telegraph was disregarded and a sale made. The Court

on appeal said the question must be in each case, "Was there or was there not such a notice given to the person charged with contempt, that you can infer from the facts that he had notice, in fact, of the order which had been made?"

The decree itself is an injunction, and must be obeyed as such. In *Phillip v. Pullen*, 18 Stew., 157, an order staying proceedings at law after verdict was held to be a temporary injunction, and therefore within the statute requiring security on such injunctions.

Our application is based on service of the decree, not on service of the writ. *Hawkins v. State*, 126 Ind., 296.

III.—AN INJUNCTION DECREE OPERATES IMMEDIATELY, AND IS NOT AFFECTED BY AN APPEAL.

There is one reported case in New Jersey where the question seems to have been fairly raised and carefully considered, namely *Riehle v. Heulings*, 11 Stew., 83. There the defendant appealed within ten days from an injunction decree establishing (as here) a right of way across his land. He did not rely on his appeal, as the present defendants do, to stay the operation of the decree, but obtained an *ex parte* order for a stay, and complainant moved to vacate this order. The defendant insisted that by appealing within ten days he had a right to have a stay, but the Chancellor held that complainant had a right to the easement established by final decree, and gave it to him by *merely vacating the order for stay*, in an opinion which shows a study of English decisions.

U. S. SUPREME COURT.

The U. S. Supreme Court is governed by statute (R. S., Sec. 1,007) which provides "to stay process on the judgment" if security is given, and that in cases where a stay may be granted "executions shall not issue until the expiration of ten days."

On careful and repeated consideration the U. S. Supreme Court holds that the review does not affect a decree for an injunction.

In *Hovey v. McDonald*, 109 U. S., 150, 161, Bradley, J., said: "This Court in the slaughter house cases decided that an appeal from a decree granting, refusing or dissolving an injunction, does not disturb its operative effect." * * * "It was decided that neither a decree for an injunction nor a decree dissolving an injunction was suspended in its effect by a writ of error, though all the requisites for a supersedeas were complied with."

To the same effect, see slaughter house cases, 10 Wall, 273, 297; *Leonard v. Ozark Land Co.*, 115 U. S., 465, 468; *Knox County v. Harshman*, 132 U. S., 14.

NEW YORK.

Under the code, a stay may be obtained by giving bond, on appeal, whereupon appellant is entitled to an order staying "all proceedings in execution of the judgment." Held, in a very carefully considered judgment that this did not affect the judgment for an injunction, "so far as it bore upon and restrained the action of the defendant, its servants and agents. It did not absolve them from the duty of obedience," and the Court granting the decree has full power to punish. *Sixth Ave. R. R. Co. v. Gilbert El. R. R.*, 71 N. Y., 430, 432; *Genet v. Del. & Hudson Canal Co.*, 113 N. Y., 472, 475.

INDIANA.

The statute of this state provides that an appeal duly perfected "shall operate as a stay of all further proceedings on the judgment."

This is decisively held not to impair the effect of a decree for an injunction, and not to prevent proceedings to punish a breach, in a case where a fine in a contempt proceeding was sustained. *Central Union Tel. Co. v. Tippecanoe County*, 110 Ind., 203; *Hawkins v. State*, 126 Ind., 294.

OTHER STATES.

We believe that the doctrine we contend for is universal, that nothing short of an express order can suspend an injunction decree, and that it cannot be stayed by appeal. *Heinlein v. Cross*, 63 Cal., 44; *Swift v. Shepard*, 64 Cal., 423; *Elliott on Appellate Procedure*, Sec. 391; 2, *Encyclo. of Practice*, p. 326, and many cases there cited; see, in particular, *Busch v. Dillon*, 96 Mo., 56, 61, 62.

IV.—SEQUESTRATION.

The appropriate process against a corporation is sequestration, placing the property of the contemnor in custody until obedience is given. *U. S. v. Memphis, &c.*, R. R., 6 Fed. Rep., 237, 239; *Spokes v. Banbury Board of Health*, L. R., 1 Eq. 42. & cases cited; *Thompson v. Penna. R. R.* 3 Dick. Ch., 105, 110.

In *Attorney General v. Great Nor. R. R.*, 15 Jur., 387 cited 5 Chitty, Eq. Dig., 5,288, the Court ordered sequestration against a railroad company for breach of injunction, and refused to suspend the process, pending an appeal against the order.

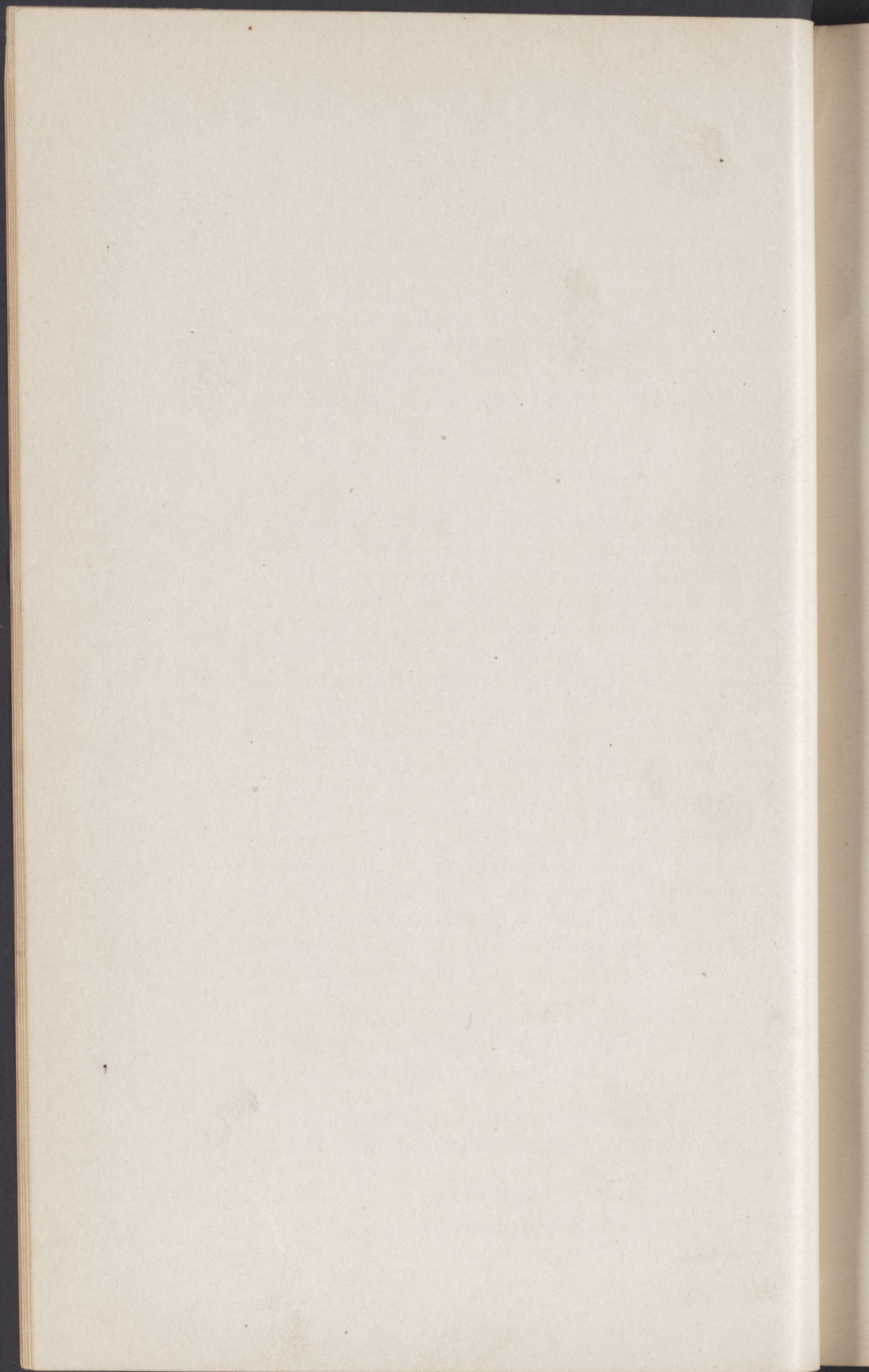
The sequestrators may be put into possession by writ of assistance. *Com'r v. Diffenbach*, 3 Grant's Cases (Pa.). Where a claim was made that a Drainage Board were violating an injunction against pollution, *James, L. J.*, said: "If they are liable, you should have applied for a sequestration." *Att'y Gen. v. Birmingham*, 17 Chan. Div., 685, 693. *Sprunt v. Pugh*, 7 Ch. Div., 567.

V.—THE PARTY STAYED BY THE COURT HAS NO REMEDY UNLESS A BOND TO ANSWER THE DAMAGES HAS BEEN REQUIRED AND GIVEN.

Russell v. Farley, 105 U. S., 433; *Palmer v. Foley*, 71 N. Y., 106; *St. Louis v. Gas Light Co.*, 82 Mo., 349, 354.

CHARLES D. THOMPSON,
COLLINS & CORBIN,
Of Counsel.

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Court of Errors and Appeals.

Between—

THE PENNSYLVANIA RAILROAD COMPANY
and EDWARD F. BROOKS,
Appellants,

AND

THE NATIONAL DOCKS AND NEW JERSEY
JUNCTION CONNECTING RAILWAY COM-
PANY,
Respondents.

On Bill, filed
August 28,
1895.

Appeal from Or-
der Adjudg-
ing Appel-
lants' Guilty
of Contempt.

Points for Appellants.

The appellants' appeal from the order of February 27th, 1896, page 36, adjudging them guilty of contempt.

The order recites that the appellants had been guilty of contempt of the Court of Chancery both by "omission and acts of commission in disobeying its final decree."

The final decree found on page 4, restrained appellants from using the tracks in a part of their passenger car yard at Jersey City in the way they were using them at and before the date of such decree.

The issue in the suit in which that decree was rendered was *whether the respondents had acquired the right to cut tracks in the possession of appellants.*"

The Chancellor decided that respondents had acquired such right.

Appellants duly appealed from such decree.

No application was made to the Chancellor to issue

process to enforce the decree, notwithstanding the appeal.

The respondents, notwithstanding the appeal, attempted to turn appellants out of the possession of the premises in litigation, by cutting the tracks in the possession of the appellants.

The respondents succeeded in cutting one of the tracks, and thereby appellants' cars on such track were wrecked.

Their cars on the other tracks were not moved by appellants.

The failure on the part of the appellants to move these cars is the alleged contempt of which they have been convicted.

The petition upon which the contempt order is founded states (page 2), "That the respondents, on the 29th of January, assembled a number of men to make excavation, but that the appellants maintained cars on the tracks in their yard and thereby the respondents were prevented from removing said tracks without wrecking the cars and bringing them down into the excavation and were prevented from entering on its route."

The answer of the appellants on the motion to adjudge them guilty of contempt recited in the opinion, page 26, line 10, was :

"That they had duly appealed from the said decree within ten days from its date, and that since that decree of appeal they had only preserved their prior possession of the tracks in dispute, that being the matter appealed from."

And that they had a right to preserve such possession because of the 150th Rule of the Court of Chancery, which provides :

"If the party appealing from a final decree shall within ten days after the filing of such final decree file his appeal with the Clerk of this Court, process shall not issue on said decree without the order of this Court or of the Court of Appeals."

And that such appeal therefore stayed the respondents, the complainants below, from taking possession under said decree.

Not only was the notice of appeal filed within ten days, but the petition of appeal, the answer of the respondents thereto, and the notice of argument at this term and the \$100 deposit, were all completed before the expiration of ten days after the signing of the final decree.

The appellants respectfully insists :

1. That as this decree was mandatory the appellants could not be guilty of a contempt of Court until after process under the seal of the Court had been issued commanding them within a definite time to obey the mandate of the Court.

In Daniel's Chancery, Second Volume, p, 1058, it is said :

“Under the original jurisdiction of the Court of Chancery no compulsory process issued against any party until he had been served with a mandate under the great seal commanding him to do what the Court required him ; for the offence committed was the not paying obedience to the great seal, consequently the mere service of a copy of the decree or order was not sufficient, but a writ under the great seal was necessary.”

And on page 490 : “Although a defendant not doing any act within the regular time is frequently said to be in contempt, yet it does not seem that this contempt is actually incurred until the writ enforcing obedience to the orders of the Court has actually been sealed.”

There was no statement in the decree within what time the appellants were to remove the cars on the tracks in the yard.

2. *The appeal within the time required by law stays* complaint from enforcing the mandatory portion of this decree without the order of the Court.

The present Rule 150 was adopted by the Court of Chancery in 1817, substantially in its present shape.

Dickinson, p. 86, Note to Rule.

This rule and Rule 151 are copied from Rules 36 and 37 adopted by the Court of Chancery of the State of New York in 1801.

These rules are found on page 439, Blake's Chancery Practice, and read as follows :

36th. That an appeal regularly entered before a decree is perfected, shall prevent the issuing of process thereon, until the appeal be heard and determined.

37th. That a party appealing from any decree or order of this Court, or any part thereof, shall state the same in writing to the Court and deliver the same to the Register of the Court within the time prescribed by law ; distinguishing whether the appeal is from the whole or part thereof, and if from a part, briefly describing the part appealed from.

In 1814 Chancellor Kent construed these rules in the case of *Green v. Winter*, 1 Johnson's Chancery, p. 77. After stating that these Rules 35, 36 and 37 were adopted June, 1806, he says :

“ The rule now in England is, that an appeal does not stay proceedings. How long this has been the established rule in England does not appear.”

“ In one of the late cases, the counsel (Mr. Mansfield) said the received opinion was otherwise until the case of *Thelluson v. Woodford* in 1798, and we are led to infer, from the observation of Lord Chancellor Apsley in *Pomfret v. Smith* (Wyatt's Prac. Reg., 35, 36), that the practice on appeal to the House of Lords was that the *Chancellor's jurisdiction* was suspended only as to the matter appealed from.” * * *

“ I believe the practice in this Court has always been according to the more ancient opinion in the English Chancery, and the appeal has been considered *as a stay of proceedings* ; this appears also to have been the understanding of this Court as declared in the 35th, 36th and 37th rules of June, 1806.”

“The 36th Rule explicitly declares that an appeal shall prevent the issuing of process upon the decree.”

“My conclusion is, that an appeal does, in the first instance, stay proceedings on the point appealed from, and that if the party wishes to proceed, notwithstanding the appeal, he must make application to the Chancellor for leave to proceed.”

“The difference then between the English practice and ours is that by the former the plaintiff must apply for an order to stay the proceedings, but here the defendants must apply for leave to proceed.”

In 1817 our Court adopted this rule (with others), from the State of New York, striking out the words, “*until the appeal be heard and determined,*” and adding the words, “*without the order of this Court or Court of Appeals first had and obtained for that purpose.*”

In 1824 Blake published his Practice of the Court of Chancery of the State of New York. On page 170 he deals with the effect of an appeal upon the progress of the cause in the Court of Chancery, he says :

“An appeal from a final decree, regularly entered before the decree is perfected, prevents the issuing process thereon until the cause can be determined. It stays, in the first instance, all proceedings in the Court upon the point appealed from ; and if the party wishes to proceed notwithstanding the appeal, he must apply to the Chancellor for leave, and unless the Court of Errors be at the time actually in session, and have the cause before them, this Court must exercise its discretion as to the propriety of allowing the party to proceed.”

“Our practice differs in this respect from the English, for in England, an appeal to the House of Lords does not stay the proceedings, unless by special order of the House ; there the plaintiff must apply to the House of Lords for a special order to stay the proceedings ; here the defendant must apply to the Chancellor for leave to proceed.”

In *Schenck v. Conover*, 2 Beas., p. 33, Chancellor Green says:

“ We follow the English practice except so far as it may be modified by statute or by rule or established practice in this Court. By the rule, if the appeal be filed within ten days after final decree it prevents the issuing of process without a special order for that purpose.”

The language “ issuing process ” had been construed by the courts of New York to mean a stay of proceeding, and it is insisted that Chancellor Green used that language with that meaning.

In *Osborne v. Williams*, 13 Stew., p. 490, there had been a final decree restraining the defendants from manufacturing fertilizers at their factory in Union County. An appeal from said decree was taken within ten days.

Notwithstanding such an appeal the complainants issued a writ of injunction, and Vice-Chancellor Bird there construed this rule as staying the issuing of process in accordance with such final decree.

In *Doughty v. Somerville & Eastern Railroad*, 3 Halsted, page 632, Judge Randolph says:

“ A decree is appealed from and the ordinary rule stays all proceedings in the cause whether in the Court below or by its officers, *or the parties or others*. For the time it puts a stop to the decree and to all proceedings by virtue thereof, and leaves the parties as if the decree had not been pronounced.”

From this it follows that the rule as to appeals as established in England by the order of the House of Lords in 1807, 15 Ves., 181, Chancellor's opinion page 28, was that on *the application of the defendant* the Chancellor has the power to determine how far the appeal should be suspensive of final decrees.

That in the State of New York the practice in chancery was that the appeal from final decrees stayed all proceedings upon the point appealed from.

In the State of New Jersey, by the rule as adopted,

the Chancellor reserved the right to determine how far an appeal should be suspensive of final decrees, upon the application of the complainant, or on his own motion.

Upon an examination of the cases to which reference is made in the opinion of the Chancellor it will not appear that any of them are adverse to this construction of the rule.

I cannot see how such a rule can work injustice in any situation.

The power of the Court to control the injunctive force of the decree at the time of the signing of the decree, or at any time afterwards, prevents, as far as possible, the appeal from being used as an instrument of injustice.

In this case the complainants below were proceeding to enforce the decree by turning defendants below out of possession of the property in dispute.

The appellants insist that the appeal stayed the defendants from attempting to enforce the decree, and that they were not guilty of contempt in refusing to aid the complainants below in enforcing the decree appealed from.

3. *The appellants insist that the order for the issuing of the writ of sequestration is in any event erroneous.*

The Chancellor orders the writ issued not upon an application to his discretion, but because the appellants were in contempt by refusing to aid respondents to carry decree into effect.

The writ of sequestration is the process by which the Court of Chancery formerly enforced all its decrees.

In Spence's Equitable Jurisdiction, Vol. 1, page 390, the author says :

“The mode of enforcing a decree (by attachment and sequestration) in the time of Henry the VI.

down to the reign of Charles the I., where the property was taken, appears to have been by committal to the Fleet Prison, for the Chancellor could not bind a right, he could only coerce the person."

It is then the issuing of process to enforce decree notwithstanding appeal without the order of the Court.

This order for a writ of sequestration commands the Sheriff of the County of Hudson to take possession of a particular portion of the appellants' property, which includes the property, the right to the possession of which was the question in litigation in this suit between the parties.

There is no precedent of a writ of sequestration until after process commanding obedience to the decree had been served and disobeyed.

This order results in the Sheriff taking the property in question from appellants and delivering to the possession of the complainants below.

This is not the method of obtaining compliance with decrees sanctioned by the precedents.

JAMES B. VREDENBURGH,
Of Counsel with Appellants.

In Chancery of New Jersey.

Between—		10
THE NATIONAL DOCKS & NEW JERSEY JUNCTION CONNECTING RAILWAY COMPANY,	Complainant,	On Bill filed August 26th, 1895. Petition.
AND		
THE PENNSYLVANIA RAILROAD COMPANY <i>et al.</i> ,	Defendants.	20

To His HONOR ALEXANDER T. MCGILL,
Chancellor of the State of New Jersey:

The petition of the National Docks and New Jersey Junction Connecting Railway Company, respectfully shows that :

(1) By the final decree entered in the above entitled cause dated and filed on the 28th day of January, 30 A. D. eighteen hundred and ninety-six, the defendants were enjoined from obstructing your petitioner in the construction of its arch across the car yard of the defendants within the route of your petitioner and from placing or maintaining any cars within the route of your petitioner upon defendants' yard tracks, one, two and three, being the three most southerly of the yard tracks in the car yard of defendants crossed by the route of your petitioner, until your petitioner should have completed its arch across said tracks and from in- 40

terfering in any other manner with the exercise by your petitioner of its franchise to build said arch in the manner set forth in the decree as by reference thereto will appear. A copy of the said decree and of the order and statement therein referred to is hereto annexed and forms part hereof.

(2) The said decree was settled on notice to the solicitors and counsel of the defendants and in their
 10 presence, and a copy thereof was served upon said solicitor on the twenty-ninth day of January, eighteen hundred and ninety-six, and on the same day a copy thereof certified was served upon the solicitor of defendants and upon Edward F. Brooks, who is the Superintendent of the defendant The Pennsylvania Railroad Company, and who is in actual charge of the car yard above referred to and has control of the agents and servants and workmen of the Pennsylvania Railroad Company, who are engaged in the movement
 20 of cars and in the operation and working of said yard, all of which will appear in detail by reference to the depositions taken in this cause before the Vice-Chancellor on the trial of the issues in the cause.

The Pennsylvania Railroad Company had notice and full knowledge of the said decree from the time of the signing thereof, and on the twenty-ninth day of January, eighteen hundred and ninety-six, the said Company, through its solicitors, served upon the solicitors of your petitioner a notice of an appeal from
 30 the said decree to the Court of Errors and Appeals.

(3) On the twenty-ninth day of January, eighteen hundred and ninety-six, your petitioner attempted to enter upon your petitioner's route across the car yard of the defendants, and assembled a number of workmen there under the supervision of your petitioner's engineer, and began excavation upon the premises, and made known to officers of the Pennsylvania Railroad Company its intention of proceeding with the execution of the work, whereupon it
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became the duty of the Pennsylvania Railroad Company, and its officers and agents in obedience to said decree, to refrain from obstructing your petitioner and from placing or maintaining any cars on said yard tracks one, two and three, being the three most southerly of the yard tracks in the car yard of defendants, and from placing, maintaining or running cars or other obstructions thereon. Nevertheless, the defendant, the Pennsylvania Railroad Company, having, on the twenty-ninth day of January, eighteen hundred and ninety-six, removed certain baggage cars heretofore for a long time left on said track, one within your petitioner's route proceeded on the same day in order to obstruct your petitioner, to place five cars loaded with stones and pieces of rock upon track one across your petitioner's route, and have since maintained them there, and have also maintained passenger cars on tracks two and three with the evident intention of obstructing the construction of your petitioner's arch, and have obstructed the same. Your petitioner has been thereby prevented from removing said tracks one, two and three or any of them without wrecking the cars and bringing them down into the excavation, and is prevented from entering on its route, and from driving sheet piling along the side lines of its route for the purpose of excavating thereon, and from constructing its arch according to the plans referred to in said decree, and is threatened with violence and injury in the lawful execution of its work and use of its franchise by the disobedience of said defendant to the decree of this Court.

Your petitioner therefore prays that the defendant, the Pennsylvania Railroad Company, and Edward F. Brooks may be punished for their misconduct in the violation of said injunction.

Dated February 3d, 1896.

DICKINSON, THOMPSON & McMASTER,

Sol'r and Counsel of Nat'l Docks & N. J.

Junction Connecting Railway Co.,

Complainant and Petitioner.

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IN CHANCERY OF NEW JERSEY.

	Between—		
	THE NATIONAL DOCKS & NEW JERSEY		
	JUNCTION CONNECTING RAILWAY COM-		
	PANY,	Complt.,	} On Bill for In- junction Filed Aug. 28, 1895. Final Decree.
10	AND		
	THE PENNSYLVANIA RAILROAD COMPANY		
	and THE UNITED NEW JERSEY RAIL-		
	ROAD & CANAL COMPANY,	Defts.	

20 This cause coming regularly on to be heard on pleadings and proofs, and counsel having heard— CHARLES D. THOMPSON and CHARLES L. CORBIN appearing for the complainant, and JAMES B. VREDENBURGH and RICHARD V. LINDABURY appearing as counsel for defendants :

30 It is on this twenty-eighth day of January, eighteen hundred and ninety-six, on motion of Dickinson, Thompson & McMaster, solicitors and counsel for the complainant, finally ordered, adjudged and decreed, and the Chancellor doth order, adjudge and decree that the defendants be and they are hereby enjoined and restrained from obstructing the complainant in the construction of its railroad and arch upon the route of complainant according to the plan and in the manner set forth in the order of amendment of the Hudson Circuit Court, dated September 30th, 1893, and in the statement filed July 11th, 1895, in the office of the Clerk of said Court, copies of which are annexed to the bill marked Exhibits B & L respectively, and from placing or

40 maintaining any cars within the route of complainant

upon defendants' yard tracks, one, two and three being the three most southerly of the yard tracks in the car yard of defendants crossed by complainant's route. until the complainant shall have completed its arch across said tracks; and from placing, maintaining or running cars or other obstructions upon any other tracks within complainant's route during the time that the complainant shall be engaged in placing stringers thereunder or in removing said tracks in the manner set forth in said statement Exhibit L, and from in 10 any manner using the service of the yard within any section of the route of the complainant where complainant shall be engaged in excavating for building their arch pursuant to said plan and statement, and from interfering in any other manner with the exercise by the complainant of its franchise to build said arch in the manner in said statement set forth, and that a writ of injunction do issue accordingly.

And it is further ordered, adjudged and decreed that the relief prayed by the defendants in their answer by way of cross-bill be denied and the said answer by way of cross-bill be dismissed; and that the defendants pay to the complainant its costs of this suit to be taxed; and that either party may apply to the Court for a modification of the terms of this decree or for further directions, as circumstances or emergencies during the progress of the work may require, or for the appointment of a Receiver to take charge of or supervise the work of construction during its progress if it shall appear necessary so to do. 20 30

ALEX. T. MCGILL,
C.

Respectfully advised,
ALFRED REED,
V. C.

EXHIBIT B.

HUDSON CIRCUIT COURT.

10	IN THE MATTER OF the taking of lands and right of crossing of the PENNSYLVANIA RAILROAD COMPANY and the UNITED NEW JERSEY RAILROAD & CANAL COMPANY by the NATIONAL DOCKS & NEW JERSEY JUNCTION CONNECTING RAILWAY COMPANY.	} On appeals from the Report of Commissioners. } Order Amending Plans.
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An application having been made on the part of
 the Connecting Railway Company above named for
 an amendment of its plans by substituting for para-
 graph five set forth in the petition for the appoint-
 20 ment of Commissioners, the amendment, a copy of
 which is hereto annexed and forms part of this order
 marked Exhibit A, and due notice having been
 given of said application and counsel appearing be-
 fore the Court, Charles D. Thompson, John R.
 Emory and Collins & Corbin, appearing on behalf
 of the applicant and James B. Vredenburg and
 Joseph D. Bedle on behalf of the Pennsylvania Rail-
 road Company and the United New Jersey Rail-
 road & Canal Company, and being heard on the
 30 23d and on the 27th days of September, A. D. 1893,
 and upon reading the affidavits and proofs presented
 on both sides and considering the objections pre-
 sented in writing to the amendment, and the Court
 being of the opinion and adjudging that the power
 of Court to make the amendment exists and that the
 amendment proposed is proper and reasonable for
 the fair trial of the controversy and will promote the
 public purposes for which the power to condemn was
 granted to said Connecting Company :

40 It is, on this thirtieth day of September, A. D.

eighteen hundred and ninety-three, ordered that the said amendment be and the same is hereby granted and allowed.

J. H. LIPPINCOTT,
Judge.

Amendment Exhibit A, annexed to the foregoing order.

The Connecting Railway Company above named, amends the proceedings and plans, as set forth in their original petition in the above-entitled matter, which petition, together with the Commissioners' report is on file in the office of the Clerk of Hudson County, so far as relates to that portion of the route south of the northeasterly side of the main line of the Pennsylvania Railroad Company and sets forth the following details and particulars of their proposed construction, in place of the details and particulars set forth in paragraph five and in sub-division one thereof in said original petition, and in the plans and cross-sections therein referred to.

5. That the said proposed railroad is to have a double track and will actually occupy and use for the purpose of said double track and the passage of trains thereon a strip thirty (30) feet wide, being fifteen (15) feet on each side of said centre line for a portion of the distance and twenty-eight (28) feet wide, being fourteen (14) feet on each side of said centre line for another portion as hereafter particularly set forth; and will make use of as much width in addition thereto as will enable it to effect its crossing in the manner hereinafter stated over said lands and railroad as aforesaid with as little injury as practicable to said Pennsylvania Railroad Company, which proposes to accomplish as follows:

(1) The said Connecting Railway Company proposes to cross so much of said lands as lies to the southward of the northeasterly side of said main line, being a distance of five hundred and twenty-four and twenty-

six hundredths (524 26-100) feet measured along said centre line by the walled cut heretofore constructed and now standing under the said main line, so far south as to a line connecting the southerly ends of the bridge seats on the abutments now standing, and for the residue of the said distance of 524 26-100 feet by an archway or tunnel, the walls of which are to be constructed of stone and to be thirteen (13) feet wide at the bottom, and resting on solid foundation, piled
 10 where necessary. The inner face lines of said walls are to be twenty-eight feet apart with a brick arch backed and supported on said walls and springing from said walls and covering and protecting the tracks of the said Connecting Railway Company of the type called a three-centre arch, having a span of twenty-eight feet and a rise, structure and form substantially as shown on the annexed cross-section.

The exterior of the crown of the arch shall be at an elevation not exceeding forty and seventy-one one-
 20 hundredths (40 71-100) feet above the established base of the Jersey City system of levels, called "Ward's Base," at the southerly end of said arch and not exceeding forty and thirteen one hundredths (40 13-100) feet above said base at the northerly end of said arch and sloping uniformly throughout and the stone walls supporting and backing said arch shall be constructed to the same elevation throughout, as the crown of the arch and with a like uniform slope
 30 given as the maximum height of the masonry structure required to enclose, cover and protect the tracks of the said Connecting Railway Company, and said walls shall have a width on top of not less than twenty-three or more than twenty-five feet, on each side from the centre line at the crown of the arch so that said walls shall constitute a suitable support and backing for the arch substantially as shown on said annexed cross-section; and said arch and walls shall be built from the northerly line of Railroad ave-
 40 nue, as shown on said map number one, to a line con-

necting the southerly ends of the bridge seats on the walls or abutments now standing under the main passenger line tracks of said Pennsylvania Railroad Company and the United New Jersey Railroad & Canal Company, and shall be connected with said walls or abutments, and shall be solidly and securely built and maintained so as to sustain the surface and permit its safe and secure use for railroad traffic and use; and the said walls and arch and all the space over the tracks and route of the Connecting Railway Company 10 above the crown of said arch and above the tops of 01 said walls will be at the disposal of said Pennsylvania Railroad Company and the United New Jersey Railroad & Canal Company to use for the purposes of their railroad yard and tracks, and for all other purposes not interfering with the maintenance and operation of the double track railroad of the Connecting Railway Company to be constructed under said arch and between said walls.

NATIONAL DOCKS & NEW JERSEY 20
 JUNCTION CONNECTING RAIL-
 WAY COMPANY. 02

By DICKINSON, THOMPSON & McMASTER,
 Attorneys.

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Exhibit L.

HUDSON COUNTY CIRCUIT COURT.

(Filed July 11, 1895.)

THE NATIONAL DOCKS & NEW JERSEY
 JUNCTION CONNECTING RAILWAY COM-
 10 PANY

VS.

THE PENNSYLVANIA RAILROAD COMPANY
 and THE UNITED NEW JERSEY RAIL-
 ROAD & CANAL COMPANY, OWNERS.

The Connecting Company above named, state the
 20 manner in which they propose to do the work of con-
 structing their arch across the car yard of the Pennsyl-
 vania Railroad Company and The United New Jersey
 Railroad & Canal Company, the owners of the said
 yards, as follows :

FIRST.—The said Connecting Company will begin
 the work of excavating and of construction of the arch
 described in the amendment made by order of the
 Hudson Circuit Court, dated September 30th, 1893,
 and filed in this cause with the Clerk of the Circuit
 30 Court, at the southerly side of the yard next to Rail-
 road avenue and will progress with the same in sec-
 tions northerly from the point of beginning.

SECOND.—The Connecting Company will remove
 from their right of way the three southerly yard tracks
 of said owners, being tracks one, two and three, upon
 the commencement of their work and thereafter will
 keep open during the progress of their work across
 said yard tracks three of the yard tracks of
 40 the said owners crossing the route of the Connecting

Company, which tracks shall be adjacent to each other, and the Connecting Company will complete their arch in sections, so that when yard tracks of the owners in excess of three in number shall be removed from the route in the course of construction, an opportunity shall be afforded concurrently therewith to the owners to relay and restore to use a like number of those previously removed across the completed section of the arch, so that said owners, during the construction of said arch, may at all times have opportunity to maintain and use all their yard tracks except three 10

THIRD.—The Connecting Company will support the sides and the north end of each section of their excavation and for the further protection of the yard track next north of and adjacent to each section excavated will, upon beginning excavation in such section, place stringers under such track across the route of the Connecting Company, commencing with yard track four (4), and when that track is taken up will shift the stringers to the track crossing the route next north of the second section excavated, and so on across the yard; such stringers to be placed in the manner usual in such construction and so that trains may be run over the track until such track shall be removed by the Connecting Company, as above set forth; which stringers will be placed under each track in such manner as to leave it substantially at the elevation at which it may be found at the time the stringers are put in place. 20 30

FOURTH.—The Connecting Company will locate the northerly line of the most northerly section but one of their excavation at least sixteen feet southwesterly from the nearest point of the southwesterly rail of the west-bound engine track so that the east-bound engine track may be operated over said space left between the excavation and the west-bound engine track to be located not more than fourteen feet distant from the centre line of the west-bound engine track across the route of the Connecting Company during the progress 40

of the excavation in said section, and the Connecting Company will not remove said east-bound engine track from said location until the arch shall be constructed so far northerly that the east-bound engine track can be shifted and used by the owners across the completed part of the arch, if they desire so to do.

DICKINSON, THOMPSON & McMASTER,

Attorneys for the National Docks &
New Jersey Junction Connecting Rail-
way Company.

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IN CHANCERY OF NEW JERSEY.

20	Between— THE NATIONAL DOCKS & NEW JERSEY JUNCTION CONNECTING RAILWAY COM- PANY, AND THE PENNSYLVANIA RAILROAD COMPANY <i>et al.</i> , Defendants.	} On Bill filed August 28th, 1896. } Proof of Ser- vice of Final Decree.
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STATE OF NEW JERSEY, }
 County of Hudson, } ss.:

30 CHARLES B. THOMPSON, being duly sworn, on his
 oath, says:

That he is one of the solicitors of the complainant in the above-entitled cause; that Edward F. Brooks is the Superintendent of the Pennsylvania Railroad Company in charge of the New York Division and having an office at Jersey City, and was a witness in the trial of this cause before the Vice-Chancellor in December last, and testified on behalf of the defendants that the Waldo Avenue Yard of the defendants was under his
 40 management and control; that on the 29th day of

January, 1896, deponent served a certified copy of the final decree in this cause upon the said Edward F. Brooks, at his office in the Office Building of the Pennsylvania Railroad Company on Exchange Place in Jersey City, by delivering the same to him personally and informing him of the contents thereof, and that on the same day he served a like copy of said final decree upon James B. Vredenburg, the solicitor of the defendants, by leaving the same at his office with his managing clerk, Mr. Rosenberg; that the final decree herein was settled and signed on the 28th day of January last on five days' notice to the defendants' solicitors, and that Mr. James B. Vredenburg and Mr. R. V. Lindabury associate counsel, attended before the Vice Chancellor and were given a copy of the decree proposed as settled. 10

Deponent further says that on the 30th day of January, 1896, late in the afternoon a notice of appeal from the said decree was served at my office signed by Mr. James B. Vredenburg, as counsel for the defendants. 20

On the 31st day of January, 1896, deponent took a copy of said decree, certified under seal, to Philadelphia and served the same upon John P. Green, Second Vice President of the Pennsylvania Railroad Company, in the office of the Pennsylvania R. R. Co., Broad and Market streets, Philadelphia, Mr. Green having stated to deponent that Mr. Roberts was not there and that Mr. Frank Thomson, First Vice President, was in New York, and that he was the head of the Company there present and the proper one to be seen in connection with any matter of business for the Company, and that deponent informed him that the paper served upon him was the final order and decree of the Court of Chancery in this cause, and delivered the same to him in his said office. 30

On the 29th day of January last, after deponent had served the order upon Mr. Brooks, he called upon him a second time and stated to him that deponent was directed by the President of the Connecting Company to 40

say that they were ready to begin work at once and would be obliged if Mr. Brooks would see that the order of the Court was complied with. Mr. Brooks replied that he had no orders to interfere with the work, and that we should go ahead, but that he could not remove any cars until he had seen counsel, and that he had an appointment to see Mr. Vredenburgh at three o'clock that afternoon.

CHAS. D. THOMPSON.

10 Sworn to and subscribed at }
 Jersey City this 1st day }
 of Feb'y, 1896, before me }

DAVID D. ZABRISKIE,

Master in Chancery of N. J.

STATE OF NEW JERSEY, } ss. :
 County of Hudson. }

CHARLES A. STERLING, being duly sworn on his oath, says: I am President of the complainant above named ;
 20 Wednesday, the 29th day of January last, I called upon Mr. Brooks, Superintendent of the Pennsylvania R. R. Co., with reference to the decree for an injunction signed on the previous day, and informed him that we desired immediately to construct our arch across the yard and had a force of men on the ground already, and explained to him the manner of construction, and that it was necessary immediately to take up the ties and rails of the first three tracks across our yard. On Thursday, January 30th, about 7 A. M., I received a communication at my house, in Orange, by tele-
 30 phone, purporting to be forwarded from the Pennsylvania Railroad office in Jersey City, substantially (and I believe, exactly) as follows : "Our counsel advises me have taken an appeal which operates as a stay and directs me to prevent interference with our tracks at all hazards. S. F. Brooks." Since that time the Pennsylvania Railroad Company have maintained cars on all of said three tracks and we cannot drive sheet piling without removing the tracks and cannot remove
 40 the tracks while cars are standing there except by un-

dermining the tracks and letting the cars fall into our excavation, a method which causes great inconvenience and danger to our employees, and great delay and expense to us as well as destruction of the rolling stock of the defendants.

CHAS. A. STERLING.

Sworn to and subscribed at Jersey, }
City, N. J., this 3d day of Feb'y, }
1896, before me.

JOHN W. QUEEN, 10
Master in Chancery
of New Jersey.

STATE OF NEW JERSEY, }
County of Hudson, } ss.:

FRED M. SLATER, being duly sworn, on his oath, says :

I am the Chief Engineer of the National Docks & New Jersey Junction Connecting Railway Company ; on Wednesday the 29th day of January last I entered upon the construction of the railway of the complainant across the Waldo Avenue Yard ; this yard is operated by the Pennsylvania Railroad Company, under the direction of yardmasters, who are under the control of Edward F. Brooks, Superintendent of the New York Division of the Pennsylvania Railroad Company ; it was necessary, in order to construct the arch referred to in the final decree in this cause across the yard, that tracks one, two and three should be immediately removed ; the first step in the convenient construction of the road is the driving of sheet piling along the edges of the right of way of the Connecting Company, and these piles cannot be driven until the tracks are removed. Piles had previously been driven along the sides of the route on the southerly slope of the yard, and these required resetting and driving to the proper line. I had on hand a large force of workmen and was prepared to set at work the largest number available on the work under the plan, but was unable to use more than about fourteen on the sheet

piling, because the cars were not removed from the tracks. I set these men at work on Wednesday afternoon in clearing up by excavating the material which had fallen within the portion of the arch already constructed and within the right of way adjacent thereto, and on Thursday morning had stringers on the ground and was prepared to place stringers under track four and to take the rails up on yard tracks one, two and three, and
 10 drive sheet piling across those tracks. I found that after my departure on Wednesday afternoon, January 29, and before my arrival early Thursday morning, January 30th, the baggage cars, which had been for some weeks standing on track 1 across the route of complainant, had been removed, but that there had been placed across the route on track 1 five flat cars loaded with heavy blocks of stone, these cars entirely crossing the route of complainant and extending on either side. I found also in the Waldo Avenue Yard
 20 six car loads of ashes and cinders on one of the yard tracks near the round-house and twelve car loads of ashes and cinders on a siding in the cut forming the western outlet of the yard. There were also lying on the route of the complainant in the yard between tracks 1 and 2 a large number of shovels and crowbars available for use in throwing ashes and blocks of stone from the flat cars into the excavation for complainant's arch on the southern slope of the yard.

At about eleven o'clock in the forenoon of the 30th
 30 of January, 1896, I saw Mr. Edward F. Brooks, the Superintendent, and Mr. Samuel Rae, assistant to the President of the Pennsylvania Railroad Company, in the yard at the top of the slope watching our excavation—both of whom attended at the trial before the Vice Chancellor in this cause in December last.

I directed the continuance of the work of resetting piling along the edges of the right of way on the slope and have completed it up to the ends of the ties on track 1. The piling should be carried on across tracks
 40 1, 2 and 3, but cannot without removing the rails and

ties, and they cannot be removed while the cars are on the tracks.

On the third day of February, A. D. 1896, I assembled a large number of workmen and began excavation on the route of the complainant. This excavation undermined the embankment supporting yard track, one on which cars of the Pennsylvania Railroad Company loaded with blocks of stone were standing. The yardmaster in charge of this yard, Mr. William Seerberger was on the premises and saw our work, but did not remove the cars. 10

A little after noon when I saw that the cars on track No. 1 within our route would soon fall unless removed, I went into the yard and asked the watchman, who was the only person in charge whom I could find, where the Assistant Supervisor whom I had seen there a short time before was or any other person in charge who could order these cars removed ; he answered that there was no one in charge. Thereupon we proceeded with our work and undermined track one by our excavation and two of the cars loaded with coal fell into the excavation. We are now engaged in removing the trucks and boxes of these cars and the stones and rocks with which they were loaded. Our excavation has extended up to the borders of track 2 on which defendants are maintaining passenger cars. The presence of these cars on these tracks is a great hindrance and expense to us in our work ; we have no way of continuing our work according to the plans referred to in the decree except by undermining the tracks and letting the cars fall into the cut, and then removing them on our own right of way. This involves tedious expense and delay and risk to the lives of our workmen. 20 30

FRED M. SLATER.

Subscribed and sworn to at Jersey }
 City this third day of February }
 A. D. 1896, before me, }

JOHN W. QWEEN,

Master in Chancery.
 of New Jersey.

IN CHANCERY OF NEW JERSEY.

	Between—	} On Bill filed August 28th, 1895. Order to show cause.
	THE NATIONAL DOCKS & NEW JERSEY JUNCTION CONNECTING RAILWAY COM- PANY,	
	Complainant,	
10	AND	
	THE PENNSYLVANIA RAILROAD COM- PANY <i>et al.</i>	
	Defendants.	

20 A petition having been presented by the above named complainant setting forth that the defendants, The Pennsylvania Railroad Company and Edward F. Brooks, one of its officers, have been guilty of a violation of the final decree heretofore issued against The Pennsylvania Railroad Company, and others in this cause, now on motion of Dickinson, Thompson & McMaster, solicitors of the petitioner :

30 It is, on this third day of February, A. D. eighteen hundred and ninety-six, ordered that the said The Pennsylvania Railroad Company and Edward F. Brooks, do show cause before the Chancellor on the eleventh day of February, A. D. 1896, at 2 P. M. at the Chancery Chambers in the City of Jersey City, why the said Company and the said Edward F. Brooks, should not be adjudged guilty of contempt and suitably punished for disobedience to the final decree made in the above-entitled cause on the 28th day of January, A. D. 1896, and why the Court shall not through the instrumentality of sequestrators or otherwise proceed to enforce its decree.

40 And is further ordered, that a copy of the petition and affidavits thereto annexed together with a copy of this order be served within two days from the date

hereof, upon the said Edward F. Brooks, and a like copy upon one of the solicitors of record for the defendants in the above-entitled cause, and that such service shall be sufficient, which copies need not be certified.

ALEX. T. MCGILL,
C.

IN CHANCERY OF NEW JERSEY.

10

Between—

THE NATIONAL DOCKS & NEW JERSEY
JUNCTION CONNECTING RAILWAY COM-
PANY,

Complainant,

AND

THE PENNSYLVANIA RAILROAD COM-
PANY *et al.*,

Defendants.

On Bill filed Au-
gust 28th, 1895.
On Order to
Show Cause. 20

STATE OF NEW JERSEY, }
Hudson County, } ss.:

EDWARD F. BROOKS, being duly sworn, on his oath, 30
says:

I am the Superintendent of the New York Division of the Pennsylvania Railroad. I have read the petition filed in this matter on the third day of February, 1896. I did not remove the passenger cars from the tracks two or three in Waldo Avenue Yard, on the line of the proposed route of the complainants across said yard, and I did have placed on track number one the flat cars loaded with stone referred to in said petition, because I was advised by James B. Vredenburgh, 40

Esq., and Richard V. Lindabury, Esq., counsel for the Pennsylvania Railroad Company in this cause, that an appeal had been taken from the final decree in said petition referred to, to the Court of Errors and Appeal of the last resort in all causes, within ten days from the filing of said decree, and that such appeal operated to suspend the force and effect of such decree. On behalf of the Pennsylvania Railroad Company, said counsel instructed me to take the course which I did, and what I did in the respect referred to was in compliance with such instructions and advice. I had no intention whatever to contemn the decree of the Court, and acted in full conviction that it did not operate after the taking of said appeal.

E. F. BROOKS.

Subscribed and sworn to, at Jersey }
 City, this 11th day of February, }
 A. D. 1896, before me. }

[L. s.]

HENRY C. ROSS,
 Notary Public, N. J.

20

IN CHANCERY OF NEW JERSEY.

Between—

THE NATIONAL DOCKS & NEW JERSEY
 JUNCTION CONNECTING RAILWAY
 COMPANY,

30

Complainant,

AND

THE PENNSYLVANIA RAILROAD COM-
 PANY and THE UNITED NEW JERSEY
 RAILROAD & CANAL COMPANY,

Defendants.

On Bill Filed
 August 28, 1895.

40

The defendants hereby appeal from the final decree made in this Court in the above stated cause, and all

and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated January 29, 1896.

VREDENBURGH & GARRETSON,
Solicitors of Defendants.

JAMES B. VREDENBURGH,
Of Counsel.

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

JAMES B. VREDENBURGH, 10
Of Counsel with Defendants.

I, ALLAN McDERMOTT, 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 in a cause wherein The National Docks & New Jersey Junction Connecting Railway Company is complainant and the Pennsylvania Railroad Company and the United New Jersey Railroad & Canal Company are defendants, now on the files of my office.

[SEAL.]

20

In testimony whereof I have hereunto set my hand and affixed the seal of the said Court at Trenton this fourth day of February, A. D., eighteen hundred and ninety-six.

ALLAN McDERMOTT, 30
Clerk.

Petition of Appeal.NEW JERSEY COURT OF ERRORS AND AP-
PEALS.

	Between—	
	THE PENNSYLVANIA RAILROAD COMPANY	}
10	and THE UNITED NEW JERSEY RAIL- ROAD & CANAL COMPANY,	
	Appellants,	
	AND	
	THE NATIONAL DOCKS & NEW JER- SEY JUNCTION CONNECTING RAILWAY COMPANY,	}
20	Respondent.	

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

The petition of the Pennsylvania Railroad Company
and the United New Jersey Railroad & Canal Com-
pany, the appellants in the above-entitled cause, re-
spectfully shows that your petitioners find themselves
aggrieved by a final decree made in the Court of Chan-
cery by his Honor Alexander T. McGill, Chancellor
30 of New Jersey, bearing date the twenty-eighth day of
January, eighteen hundred and ninety-six, wherein
the said The National Docks & New Jersey Junction
Connecting Railway Company was complainant, and
your petitioners, The Pennsylvania Railroad Company
and the United New Jersey Railroad & Canal Com-
pany were defendants, in this respect, to wit, that the
said decree doth order, adjudge and decree that the de-
fendants be and are thereby enjoined and restrained
40 of its railroad and arch upon the route of complainant

according to the plan and in the manner set forth in the order of amendment of the Hudson Circuit Court, dated September 30th, 1893, and in the statement filed July 11th, 1895, in the office of the Clerk of said Court, copies of which are annexed to the bill marked Exhibits B and L respectively, and from placing or maintaining any cars within the route of complainant upon defendants' yard tracks one, two and three being the three most southerly of the yard tracks in the car yard of defendant crossed by complainant's route, until the complainant shall have completed its arch across said tracks; and from placing, maintaining or running cars or other obstructions upon any other tracks within complainant's route during the time that the complainant shall be engaged in placing stringers thereunder or in removing said tracks in the manner set forth in said statement, Exhibit L, and from in any manner using the surface of the yard within any section of the route of the complainant where complainant shall be engaged in excavating for or building their arch pursuant to said plan and statement, and from interfering in any other manner with the exercise by the complainant of its franchise to build said arch in the manner in said statement set forth, and that a writ of injunction do issue accordingly. 10 20

And also in this respect, to wit, that in and by the said decree it was ordered, adjudged and decreed that the relief prayed by the defendants in their answer by way of cross bill should be denied, and the said answer by way of cross bill be dismissed. 30

And in this respect, to wit, that the defendants shall pay to the complainants their costs of suit to be taxed. And your petitioners humbly appeal from the said decree of the Chancellor, which decree as aforesaid upon the ground that the same is erroneous, for that the said decree should have adjudged that the complainant was not entitled to the relief prayed for in its said bill of complaint, and should have ordered, adjudged and decreed that the said arch should be constructed by the complainant without disturbing the defendants in their 40

use of the yard tracks, and that the complainants should, during the construction of the arch, support the yard tracks of the defendants that the defendants should not be interrupted in the use of their said tracks during the construction of the arch, at least until all the arch was constructed except the turning of the arch ; and that the said bill of complaint should be dismissed with costs.

10 And further, that the said decree should have adjudged that the defendants were entitled to the relief prayed for in their answer by way of cross-bill, and should have given them the relief therein prayed for.

And further, that the said award of costs is erroneous.

And your petitioners therefore pray that the said decree of the Chancellor may be altogether reversed, set aside and for nothing holden. And that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

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VREDENBURGH & GARRETSON,

Solicitors of Appellants.

JAMES B. VREDENBURGH,

Of Counsel with Appellants.

[Endorsed :]—Filed February 1, 1896.—Henry C. Kelsey, Clerk.

30 1. An appeal from the Court of Chancery is without effect upon the subsequent proceedings in a cause there pending, while it remains undetermined, except it be taken from a final decree within ten days after the decree is signed, in which case it stays process in execution of the decree, unless order be made to the contrary. If other relief against a final decree, while the appeal is undetermined, be necessary or proper, it must be had by order of this or the Appellate Court.

40 2. The mere existence of an appeal from a final decree does not affect the inherent validity and force of

that decree. If the decree is itself an injunction, that injunction remains in force after the appeal, and must be obeyed, unless this or the Appellate Court shall order a suspension of its effect.

3. In enforcing obedience to an injunction from a corporation, sequestration may be resorted to.

NATIONAL DOCKS, &c., R. R. Co.	}	10
vs.		
PENNSYLVANIA R. R. Co. <i>et al</i> , and EDWARD F. BROOKS.	}	

On petition and order to show cause why the defendants shall not be adjudged to be in contempt for non-obedience to the decree of this Court herein, and punished. 20

The complainant, by condemnation, has acquired the right to cross a car yard of the defendants, nearly at right angles to twenty-one railroad tracks lain therein, by means of an arched masonry passageway beneath the surface of the yard. The parties having failed to agree as to the manner in which the work of constructing that arched passageway shall be executed, the aid of this Court was invoked to regulate the enjoyment of their respective rights in that respect 30

The suit has been prosecuted to final decree, signed on the 28th of January, 1896, by which, among other things, it was ordered,

“ That the defendants be and they hereby are enjoined
 “ and restrained from obstructing the complainant in the
 “ construction of its railroad and arch upon the route
 “ of complainant according to the plan and in the
 “ manner set forth in the order of amendment of the
 “ Hudson Circuit Court dated September 30th, 1893,
 “ and in the statement filed July 11th, 1895, in the 40

“ office of the Clerk of said Court, copies of which are
 “ annexed to the bill, marked Exhibits B & L respect-
 “ ively, and from placing or maintaining any cars
 “ within the route of complainant upon defendants’
 “ yard tracks one, two and three, being the most
 “ southerly of the yard tracks in the car yard of de-
 “ fendants covered by complainant’s route, until the
 “ complainant shall have completed its arch across
 “ said tracks.” &c.

10 From this decree the defendants duly appealed,
 within ten days from its date.

On the 29th of January, the defendants, hav-
 ing first given notice of their appeal from
 the decree, through their superintendent, Edward
 F. Brooks, removed some baggage cars which for
 some time theretofore had been standing upon their
 yard track number “ one,” over the route of the com-
 plainant’s crossing, and deliberately moved five flat
 cars loaded with heavy pieces of rock to the place thus
 20 vacated and maintained them there, having in readi-
 ness implements to enable the employees of the defend-
 ant companies to throw the rocks into any excavation
 the complainant might make and thus obstruct the
 erection of the complainant’s tunnel. The flat cars
 were thus maintained until the complainant’s workmen
 undermined the tracks upon which they were placed
 and some of them fell into the excavation, but the de-
 fendants did not throw the rocks from them. The de-
 fendants have also, since the making of the decree,
 30 maintained passenger cars on their tracks, “ two” and
 “ three,” at the place of the complainant’s crossing.

Because of this conduct, the complainant seeks to
 have the defendants adjudged to be in contempt for
 violation of the injunctive provisions of the decree and
 punished.

MESSRS. CHARLES D. THOMPSON and CHARLES L. CORBIN,
 For the Complainant.

MESSRS. JAMES B. VREDENBURGH, R. V. LINDABURY and
 FRANK BERGEN,

THE CHANCELLOR :

The decree prescribes the manner in which the construction of the arched tunnel crossing of the defendants' yard is to be executed ; restrains the defendants generally from obstructing such execution and enjoins them particularly from placing, or maintaining cars on their tracks at points in the route of crossing at which the complainant may, under the plan of construction, from time to time be proceeding with its work.

The design of such injunction is to give the complainant possession of the route of crossing for the purpose of constructing its tunnel in the manner sanctioned by the decree. It is restrictive in that it forbids interference, and it is mandatory in effect, in its requirement that maintenance of existing obstructions, in the shape of cars upon the tracks to be crossed shall cease.

The defendants have disputed, and, in their appeal propose yet to dispute, the lawfulness of the method of constructing the tunnel which the decree prescribes. Their argument is that such method permits the severance of several of the car tracks in the yard at a time during the progress of the work, and thus sanctions the temporary putting of a portion of the yard into disuse, when, in fact, it is possible for the complainant, at additional expense, to accomplish the construction without severing any of the tracks. Therefore such severance, and the consequent deprivation of the use of part of the yard is unnecessary, and hence, an unlawful interference with them in the exercise of their franchises.

In answer to this application they insist that the appeal operates as a *supersedeas* of the injunctive provisions of the decree, so that pending the determination of the appeal no movement may be made by the complainant under the protection of the decree, and they are not restrained from resisting any attempt upon the complainant's part to prosecute the construction.

In absence of any statutory regulation or established practice or court rule, of our own, the English practice

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has always prevailed in this Court. *West v. Paige*, 1 *Stock*, 203; *Schenck v. Conover*, 2 *Beas.*, 33; *Ratzer v. Ratzer*, 2 *Stew. Eq.*, 162; *Hitchcock v. Rhodes*, 15 *Stew. Eq.*, 495.

In *Hover v. McDonald*, 109 *U. S.*, 150, Mr. Justice Bradley, who, it is remembered, at one time was an eminent practitioner in this Court, said :

10 “ In England until the year 1772, an appeal from a
 “ decree or order in Chancery suspended all proceed-
 “ ings ; but since that time a contrary rule has pre-
 “ vailed there. The subject was reviewed by the
 “ House of Lords in 1807 ” (15 *Ves.*, 184), “ and an or-
 “ der was made establishing the right of the Chancel-
 “ lor to determine whether and how far an appeal
 “ should be suspensive of proceedings subject to the or-
 “ der of the House on the same subject.”

Our cases recognize the later English rule, modified somewhat by Court Rule, as prevailing in this Court.

20 “ By the practice of the English Court of Equity,”
 said Chancellor Green in *Conover v. Schenck*, *supra*,
 “ as well as by the practice of this Court, so far as reg-
 “ ulated by statute, an appeal from a decree in equity,
 “ either interlocutory or final, does not stay proceed-
 “ ings in the case below, or prevent the issuing of pro-
 “ cess without a special order for that purpose.”

30 In the earlier case of *Doughty v. Somerville & Easton R. R. Co.*, 3 *Halst.*, *Ch.* 629, the same distinguished
 Judge, then Chief Justice sitting in the Court of Errors
 and Appeals, said :

“ By the ancient practice it was held that an appeal
 “ from a Court of Equity stayed all further proceed-
 “ ings in the Court below. But by the modern Eng-
 “ lish practice, the appeal does not stay proceedings,
 “ but an order for that purpose must be obtained in
 “ the Court of Chancery or in the House of Lords.”
 * * * “ By our practice, an appeal from an
 “ interlocutory decree does not stay proceedings ex-
 40 “ cept by an order of this Court or the Court of Chan-

“ cery for that purpose. If an appeal from a final decree be filed in ten days, it prevents issuing process on the decree. Rules of Court of Chancery, Rule “ XX.”

The rules of the Court of Chancery in force when Chief Justice Green thus wrote, are to be found in Potts' Chancery Precedents (published in 1841). They are as follows .

“ XX. of Appeals.”

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“ 1. In case of an appeal from an order or interlocutory decree, the appeal shall not stay proceedings thereon without an order of this Court or of the Court of Appeals, for that purpose first had, and upon complying with such terms as the Court making the order to stay proceedings may impose.”

“ 2. In case of an appeal from any final sentence or decree, if the party appealing shall, within ten days after such final sentence or decree, file his appeal with the Clerk of this Court, it shall prevent issuing process on the said decree, without the order of this Court or of the Court of Appeals first had and obtained for that purpose.” 20

The rules to-day are in substance the same. They are :

“ 149. An appeal from an interlocutory decree or order shall not stay proceedings in the cause without an order of this Court, or of the Court of Appeals, for that purpose first had ; which order shall be granted upon such terms as the Court making it may may impose.” 30

“ 150. If the party appealing from a final decree shall, within ten days after the filing of such final decree, file his appeal with the Clerk of this Court, process shall not issue on said decree without the order of this Court or of the Court of Appeals.”

It appears then to be clear that the mere taking of 40

an appeal from this Court is without effect upon subsequent proceedings in the cause, except it be taken from a final decree within ten days after the decree is made, and then it stays process in execution of the decree, unless order be made to the contrary.

If other relief against the decree, pending the determination of the appeal, be necessary or proper, it must be had by order of this Court or of the Appellate Tribunal. Moreover, I find no warrant for the insist-
 10 ment that the mere existence of an appeal suspends or in any manner affects the present inherent validity and force of the decree appealed from. The person in whose favor it is rendered is denied process to enforce it, and that is all. Consequently, where the decree is itself an injunction, that injunction is in force and must be obeyed, unless, to continue the *status quo* of the parties, pending the determination of the appeal, this Court or the Court of Errors and Appeals, shall order a suspension of its effect. And it
 20 is not necessary to issue a writ to bind the parties to the suit to obedience to such a decree. Being before the Court they are bound at their peril to take notice of the provisions of any decree rendered in due course upon the issues tendered. *Hawkins v. State*, 126 Ind., 296.

I find that the great weight of authority throughout the country, where statutes similar in effect to our rules prevail, accords with this view.

In the case of *Hovey v. McDonald*, already cited,
 30 the decree directed a receiver to deliver certain funds to the defendants. After appeal had been duly taken, the receiver obeyed the decree, and question arose in the United States Supreme Court whether appeal had operated as a *supersedeas* so that the decree should not have been obeyed, and the Court held that it had not.

Mr. Justice Bradley, in the opinion of the Court, said:

40 “ But the decree itself, without further proceedings,

“ may have an intrinsic effect which can only be suspended by an affirmative order either of the Court which makes the decree or of the Appellate tribunal.”

He instances the decision of the United State Supreme Court in the *Slaughter House cases*, 10 Wall, 273, where it was held that a decree granting, refusing or dissolving an injunction does not disturb its operative effect, and in which Mr. Justice Clifford said :

“ It is quite certain that neither an injunction nor a decree dissolving an injunction passed in a Circuit Court is reversed or nullified by an appeal or writ of error before the cause is heard in this Court.”

In the New York Court of Appeals, in the case of the *Sixth Ave. R. R. Co. v. Gilbert Elevated R. R. Co.*, 71 N. Y., 430, a judgment forbade the appellants proceeding with the construction of its railroad. An appeal was perfected, and an order was obtained staying execution upon the judgment, and then the appellant, notwithstanding the restraint of the judgment, having tied up its affirmative enforcement, proceeded with the erection of its road, the thing forbidden by the judgment. A Judge at Chambers thereupon ordered the appellant to show cause why it should not be held to be in contempt. The General Term of the Supreme Court vacated the order, and its action was carried to the Court of Appeals, where the appeal was dismissed, because the action of the General Term appeared to have been put upon the ground of exercise of judicial discretion and not upon the ground of want of power, and therefore was not appealable. But in the Court's opinion Judge Allen discussed the subject we consider, taking views which have commanded general approval throughout the country. He said :

“ By the appeal, with a stay of proceedings on the part of the plaintiff in execution of the judgment, the judgment was not annulled or its obligations upon the defendant impaired, but its ‘ execution ’ was stayed—that is, the plaintiff was prohibited from issuing process

“in execution of it.” * * * “The order of the
 “judge was in substantial compliance with the statute
 “and stayed all proceedings on the part of the plain-
 “tiff in execution of the judgment. But this did not
 “affect the validity or effect of the judgment pending
 “the appeal, so far as it bore upon and restrained the
 “action of the defendant, its servants or agents. It
 “did not absolve them from the duty of obedience
 “and permit them to do that which the judgment
 10 “absolutely prohibited, and the doing of which would
 “cause irreparable mischief to the plaintiff or an
 “injury which could not certainly be compensated in
 “damages.”

To the same effect are the cases *Gardner v. Gardner*, 87 *N. Y.*, 18, and *Genet v. Del. & Hudson Canal Co.*, 113 *N. Y.*, 475. In the latter of these cases Andrews, J. said:

20 “The judgment in this case prohibits the defendant
 “from using its structures on the plaintiff’s lands in
 “the way in which it had been accustomed to use
 “them for several years, and from depositing culm
 “on the surface. It adjudges the right, as claimed
 “by the plaintiff, and denies the adverse claim of the
 “defendant. The judgment operates, of its own
 “force and without further process, as a prohibition
 “against doing the act enjoined. The appeal does
 “not of itself relieve the defendant from the duty to
 “obey the judgment.”

30 In Indiana the same doctrine is maintained in well-
 considered deliverances.—*Central Union Telephone Co.*
v. State, 110 *Ind.*, 203; *Hawkins v. State*, 126 *Ind.*, 296.
 And in *State ex. rel. Busch v. Dillon*, 96, *Mo.*, 56—
 where the effect of the statutory provision is that a
 perfected appeal should stay execution and all further
 proceedings upon the judgment appealed from, Brace,
 J., said:

40 “Our law regulating practice in injunction and ap-
 “peals is essentially the same as that prevailing in the

“Federal Courts and those of other States, and the
 “overwhelming weight of authority is that injunctions
 “ordered on final hearing on the merits are not va-
 “cated by an appeal from that decree. A stay of
 “proceedings from its nature operates only on orders
 “and judgments commanding some act to be done and
 “does not reach injunctions.”

The wisdom of this limitation upon the effect of an
 appeal and requirement of a special order to suspend 10
 the injunctive force of a decree is conspicuous when we
 regard the infinite variety of situations which com-
 mand the exercise of the injunction power in the ad-
 ministration of justice, and consider that it is impos-
 sible to formulate any uniform scheme of suspension
 by the appeal alone, which may not be used as an in-
 strument of grievous injustice. Each case must be
 submitted to judicial discretion.

There is no doubt as to the power of the Courts,
 original and appellate, to ascertain and by order in 20
 furtherance of justice to preserve the *status quo* pend-
 ing appeal.

In *Hovey v. McDonald* Mr. Justice Bradley said
 upon this subject: “This power undoubtedly exists,
 “and should always be exercised when any irremedi-
 “able injury may result from the effect of the decree
 “as rendered.”

So also it is affirmed in *Genet v. Del. & Hudson*
C. Co., 113 N. Y., 475, and *New Brighton, &c., R. 30*
R. Co. v. Pittsburgh, &c., R. R. Co., 105 Penn. St.,
13, 23.

Upon the facts presented by the complainant's
 petition in the present matter there is no question as
 to the defendant's disobedience of the injunctive pro-
 visions of the decree. Not only have they failed to
 desist from maintaining cars upon the tracks specified
 in the decree, but they have affirmatively substituted
 for cars which were upon one of the tracks when the
 decree was made, others more obstructive of the work 40

which the decree permits. Their disobedience has consisted of not only negative omission, but also of active commission. The facts charged are not denied. Refuge is taken in the advice of counsel, which was in accordance with the insistent here, that the appeal suspended the force and effect of the decree, and a disavowal upon the part of Mr. Brooks of any intent to contemn or defy the authority of the Court. The defense is available as tending to eliminate the criminal features of the contempt and to mitigate punishment, but it does not change the fact of disobedience and existence of at least constructive contempt.

Consideration of the action to be taken by the Court remains. Should it inflict punishment and proceed, as the complainant asks, by sequestration or otherwise, to enforce obedience to its decree?

It is argued that in the present situation of affairs such action would be equivalent to an order that process shall issue to enforce the decree. It is true, resort to sequestration, which appears to be a proper method of securing obedience in case of corporate disobedience (*U. S. v. Memphis, &c., R. R. Co.*, 6 *Fed. Rep.*, 237, 239; *Thompson v. Penna. R. R. Co.*, 3 *Dick. Ch.*, 105, 110; *Spokes v. Bradbury Board of Health L. R.*, 1 *Eq.*, 42; *Atty. Gen'l v. Great Northern R. R. Co.*, 15 *Jur.*, 387; *Atty. Gen'l v. Birmingham, &c., Board*, 17 *Ch. Div.*, 685, 693) would lead to the enforcement of the decree, and also that punishment by fine or otherwise, leaving the decree in force, would be a step in the same direction; but when the Court's decree is disregarded or deliberately defied, is the punishment of the contemnor to be withheld, because it may operate to deprive him of an advantage which the Court's rules of procedure give him?

The contrary has been held even where the issuance of process in enforcement of a decree is forbidden by statute (*Sixth Ave. R. R. Co. v. Gilbert E. R. R. Co.*; and *State ex rel. Busch v. Dillon*) above cited, the proceedings in attachment being regarded as independent and *quasi* criminal. And this is the true rule, other-

wise the decree of the Court would practically be a nullity from the time the appeal is taken until it shall be determined.

In the argument of this matter the defendants' counsel distinctly declared that they did not ask for the suspension of the injunctive force of the decree; that they denied the operative force of the decree and rested upon that position alone.

In this attitude of affairs I deem it to be my duty, in meting out punishment, not only to so act as to rebuke 10 that at least constructive indignity to the Court, but also to do that which will insure obedience to the decree in respect to the complainant's right under it. *2 Bishop's Cr. Law. Sec., 269.* The injunctive force of the decree remaining in force, such action is necessary to its adequate protection and must be taken notwithstanding its effect may be the enforcement or partial enforcement of the decree. Doubting the efficacy of a mere fine to accomplish more than punishment for the offense against the Court itself, because of the de- 20 fendants' preparation and manifest disposition to resist the complainant's progress by force, I feel constrained to resort to sequestration. I therefore will fine each of the defendants ten dollars, to be paid to the clerk for the use of the State, in accordance with the requirements of the statute (*Rev. 123, Sec. 103*), and I will direct the issuance of a commission of sequestration, limited to the car yard in question and the goods and chattels of the defendant companies while therein, to the end that they may be so controlled that future 30 interference with the prosecution of the work permitted by the decree shall be prevented; which commission shall continue in force until the crossing shall be built unless otherwise directed by order of the Court, as I am reluctant to believe that the defendants will not immediately give satisfactory assurance of obedience to the decree which may induce me to revoke the direction for sequestration, the issue of the commission will be withheld for thirty days.

A true copy,

ALLEN McDERMOTT,

Clerk.

IN CHANCERY OF NEW JERSEY.

10	Between— THE NATIONAL DOCKS & NEW JERSEY JUNCTION CONNECTING RAILWAY COM- PANY, Complainant.	On Bill filed August 28, 1895, On Petition for Contempt. Filed Feby. 3, 1896. Decree.
	AND	
	THE PENNSYLVANIA RAILROAD COMPANY AND THE UNITED NEW JERSEY RAIL- ROAD & CANAL COMPANY, Defendants.	

20 The complainant in above-stated cause having on
 February 3, 1896, filed a petition alleging contempt of
 the decree of this Court made January twenty-eighth
 A. D. 1896, on the part of the Pennsylvania Railroad
 Company and Edward F. Brooks its Superintendent,
 and an affidavit having been filed in response to said
 petition and the matter having come on to be heard in
 the presence of Charles D. Thompson and Charles L.
 Corbin of Counsel with the complainant and James B.
 Vredenburgh, Richard V. Lindabury and Frank Ber-
 30 gen of counsel with the defendants, and the Chancellor
 having on the seventeenth day of February eighteen
 hundred and ninety-six pronounced an opinion adjudg-
 ing that the defendant, the Pennsylvania Railroad
 Company and Edward F. Brooks its Superinten-
 dent had, both by omission and acts of commis-
 sion, been guilty of contempt of this Court in disobey-
 ing its said final decree. but that such conduct was
 based on advice of counsel and that the complainant
 was entitled to a writ of sequestration to sequester the
 40 Waldo Avenue Car Yard referred to in said decree and
 the goods, and chattels of the said defendant the Penn-

sylvania Railroad Company while therein to the end that said car yard, goods and chattels may be so controlled that future interference with the prosecution of the work permitted by the decree shall be prevented—such writ to continue in force until the crossing of the said complainant shall be built and completed, and the Chancellor assuming that the defendants would give satisfactory assurance that obedience to the decree which might induce him to revoke the direction for sequestration ~~would~~ be rendered, and in consequence 10
having then announced that the issuance of the writ would be withheld for thirty days; and the matter now coming on for the signing of the order in the premises, and it being conceded in open court by counsel on both sides that the terms of the said decree have, since the nineteenth day of February, A. D. eighteen hundred and ninety six, been complied with by the defendants; and the said Superintendent and the Court being now of opinion, in view of such fact, and the future 20
obedience which it presages, that the writ of sequestration should not issue until the further order of the Court,

It is, on this twenty-seventh day of February, A. D. 1896, on motion of Dickinson, Thompson & McMaster, solicitors for and of counsel with complainant,

Ordered, adjudged and decreed, that the said defendant, the Pennsylvania Railroad Company and the said Edward F. Brooks, do pay a fine of ten dollars each, hereby imposed upon them respectively, to the Clerk 30
of this Court, for the use of the State in accordance with the requirements of the statute; and that they pay to the said complainant the costs of this proceeding, to be taxed.

And it is further ordered, that a writ of sequestration do issue out of this Court directed to John J. Toffey, Sheriff, to sequester the said Waldo Avenue Car Yard and the goods and chattels of the Pennsylvania Railroad Company while therein, to the end that said car yard, goods and chattels may be so con- 40

*By reason of the disobedience of the decree
aforesaid are guilty of contempt and that
for said disobedience they*

trolled that future interference with the prosecution of the work permitted by the decree shall be prevented and that said writ of sequestration shall continue in force until the crossing of the complainant Company shall be completed, unless otherwise directed by the order of this Court ; but in view of the status exhibited by the recitals herein as to the present obedience to the decree ; it is further ordered that the actual issuance of said writ of sequestration be withheld until the
10 further order of this Court.

ALEX T. MCGILL,
C.

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IN CHANCERY OF NEW JERSEY.

Between—

THE NATIONAL DOCKS & NEW JERSEY
JUNCTION CONNECTING RAILWAY COM-
PANY,

Complainant,

AND

THE PENNSYLVANIA RAILROAD COMPANY
and THE UNITED NEW JERSEY RAIL-
ROAD & CANAL COMPANY,

Defendants.

On Bill filed
Aug. 28. 1895. 10
On Petition for
Contempt.

The Pennsylvania Railroad Company and Edward F. Brooks hereby appeal from the order or decree made in this Court in the above-stated cause on the day of the date hereof, adjudging them to be guilty of contempt, and from all and every part thereof, to the Court of Errors and Appeals in the last resort in all causes. 20

Dated February 27, 1896.

VREDENBURGH & GARRETSON,
Solicitors for the Appellants.

R. V. LINDABURY,
Of Counsel with Appellants.

I conceive there is good cause for appeal in the above-stated cause. 30

R. V. LINDABURY,
Counsel with Appellants.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between—		}	On Proceedings for Contempt.
THE PENNSYLVANIA RAILROAD COM- PANY and EDWARD F. BROOKS, Appellants,			
AND			
10	THE NATIONAL DOCKS & NEW JER- SEY JUNCTION CONNECTING RAILWAY COMPANY, Respondents.		

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

20 The petition of the Pennsylvania Railroad Company
and Edward F. Brooks, the appellants in the above-
entitled cause, respectfully shows that your petitioners
find themselves aggrieved by a decree or order made
in the Court of Chancery by his Honor Alexander T.
McGill, Chancellor of New Jersey, bearing date the
twenty-seventh day of February, eighteen hundred and
ninety-six, in a cause wherein the said National Docks
& New Jersey Junction Connecting Railway Company
was complainant, and the Pennsylvania Railroad Com-
pany and The United New Jersey Railroad & Canal
30 Company were defendants, in this respect, to wit.,
that the said order or decree doth order and adjudge
that your petitioners are guilty of contempt of the
Court of Chancery in disobeying its final decree in
said cause.

And also in this respect, to wit, that in and by the
said order or decree it was ordered and adjudged that
your petitioners do pay a fine of ten dollars each to
the Clerk of the Court of Chancery for the use of the
40 State, and that they pay to the said National Docks

& New Jersey Junction Connecting Railway Company its costs in said proceeding for contempt to be taxed.

And also in this respect, to wit, that in and by the said order or decree it was ordered and adjudged that a writ of sequestration be issued out of the said Court of Chancery, directed to John J. Toffey, Sheriff, to sequester the Waldo Avenue car yard and the goods and chattels of the Pennsylvania Railroad Company while therein; to the end that said Car Yard, goods and chattels may be controlled, that future interference with the prosecution of the work permitted by the said final decree shall be prevented. 10

And your petitioners humbly appeal from the said order or decree of the Chancellor which orders and adjudges as aforesaid, upon the ground that the same is erroneous, for that the said decree should have adjudged that your petitioners were not guilty of contempt of the Court of Chancery in disobeying its said final decree and should have adjudged that the said final decree was suspended in its force, operation and effect by an appeal taken therefrom by the Pennsylvania Railroad Company and The United New Jersey Railroad & Canal Company to this Court. 20

And your petitioners therefore pray that the said decree of the Chancellor may be altogether reversed, set aside and for nothing holden, and that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

VREDENBURGH & GARRETSON, 30

Solicitors of Appellants.

R. V. LINDABURY,

of Counsel with Appellants.

