Law Suit

There appear to have been two law suits against Keely. One in 1882 and the other in 1888.

Court Records of Keely's Trial and Incarceration
(typos from original document)

This Certiorari.

John McQ-ahren, for plaintiff.

P. H. Campbell, for defendant in error.

June 11,1888. Opinion by Rice, P. J.

There are no irregularities on the face of this record sufficient to warrant a reversal of the judgment on ctrtiorari sued out after the expiration of twenty days. The transcript shows that on January 11,1888, both parties appeared, and, after hearing, the justice held the case under advisement until January 14, 1888, at nine o'clock, A. M., at which time he entered judgment for the plaintiff. The defendant testifies that the justice did not adjourn the case to my definite time, but that, after the conclusion of the hearing, he promised her and her counsel to notify the latter of his conclusion in the matter, which he failed to do. There are exceptional cases in which, to prevent injustice, the Court will receive parol testimony in contradiction of the record. One of these is where the justice makes up a false record; but where this is alleged the evidence should be such as to leave no reasonable doubt of the fact. Here the justice testifies, in support of the record and in direct contradiction of the defendant, that after the trial, in the presence of the attorneys and parties, he gave notice that he would hold the case under advisement until January 14. He also denies that he promised to give notice as alleged by the defendant.

We therefore, have on the one side the uncorroborated oath of an interested party, and on the other a record, presumed. prima facie, to have been made up correctly, and the oath of the magistrate, presumed to be impartial and disinterested, in support of it. The Court would not be justified in overturning the judgment where the allegation of misconduct on the part of the justice is so seriously in doubt. It is our plain duty to decide the case upon the record as it stands, and to leave the party alleging misconduct to pursue the ordinary legal remedy.

The exceptions are overruled, and the judgment affirmed.

â€”Jf. Kulp. Rep.

(Common

C. P. No. 3, OF PHILADELPHIA CO.

In the matter of the Commitment of John W. Keely.

Equity - Records - Docket entries not records - Decrees - Evidence tJtat suit properly brought - Completion of record ly Court.

The Court will complete its record without the application of the parties, They have the right to ask the action of the Court in this respect.

Decrees of Court are evidence conclusive that the subject of the decrees have been properly brought before the Court.

Records are the papers filed upon which the Court has acted, and which set forth the action of the Court.

Docket entries are the minutes of the Pro- thonotary, and form no part of the records.

At the opening of the court on Saturday, February 2d, Mr. Shields said he desired to make a motion to complete the record in the case Wilson vs. Keely.

Jndyf Finlrtter : We have considered this matter, and yesterday filed an opinion expressive of our views, without the application of the parties. They however, have the right to make such suggestions for our consideration as they think proper. We will, therefore, entertain the motion.

Mr. SJiieltls: I ask leave to file of record this letter from defendant's counsel to us as fixing the date of the motion to dissolve the special injunction which was made by defendant. The letter is as follows :

Bennet Wilson vs. John W. Keely.

C. P. 3. S. 87. No. 372. In Equity.

Gentlemen: Please take notice that the defendant herein will on Saturday next, January 21st inst., at 10 o'clock a. m., or as soon thereafter as counsel can be heard in the Court of Common Pleas No. 3 for the City and County of Philadelphia, move the said Court for an order to dissolve the preliminary injunction heretofore granted in said cause.

J. Jos. Murphy,
Chas. B. Collier,
For defendant.
Jan 18, 1888.

To Rufus E. Shapley, A. S. L. Shields, Strawbridge & Taylor, Esqs., Attorneys for complainant.

Mr. Shields: I desire to have placed formally upon the minutes the order of court of September 23, 1888, modifying the order of April 7, 1888, for inspection, which appears on the record certified to the Supreme Court.

The motion was allowed.

February 1, 1889. Opinion by FinkLetter, P. J.

The opinions filed by the Justices of the Supreme Court in the above matter seem to be based upon a misconception of the true proceedings, and in reliance upon facts not appearing in the record, and which never had existence.

Respect for that tribunal therefore requires us to show wherein they have been misled ; and a proper regard for our own will excuse the desire to free ourselves from the reproach of irregularity.

From the opinions filed by the learned Court it is apparent that the order to in sped was a proper one if made after an issue was raised, and could have been enforced by attachment and imprisonment.

Justice Mitchell says: " It was stated without challenge at the argument that the relator had made a motion to dissolve the special injunction before the order of April 7th, 1888, and the concluding sentence of the opinion of the learned Judge indicates that such was the fact, and that the order was made with special reference to the hearing on that motion. If that motion was before us I should be of opinion that the inspection directed by the Court was within the regular power of a Court of Equity, especially when it was concurred in by the relator himself for several months, nominally complied with until he found it was to be a real examination, which was to bring his discovery to a genuine test before a competent mechanical tribunal."

Chief Justice Paxson says : "The order of April 7th, was made by which the defendant in advance of any issue was not only required to exhibit his machine, but also to operate it and explain the mode of its construction and operation, although it clearly appears that it would require considerable expense to clean the machine, put it together and operate it."

The learned Judge cannot have had his attention called to the fact that the order referred to was modified, and Mr. Keely was relieved from operating the machine. The order is in the relator's paper book, page 31, as follows: "That the experts shall meet again with notice to Mr. Keely, and shall make as full an examination in the presence of Mr. Keely as they can of the machine and the things connected with it up to the point of putting it in

actual operation, and then, if that cannot be done because Mr. Keely has not the money, let the experts report to us up to that time what they have done."

In this case the defendant Had filed a demurrer, and a motion to dissolve the special injunction, which was heard with the motion for inspection March 14. Upon each of these three questions affidavits which appear of record were presented and made the bases of the decree of the Court. This evidence, moreover, raised the issue of the similarity of the machines, and upon that issue the defendant demanded the judgment of the Court.

The decision of the Supreme Court ap pears to be based also upon an error of one of the clerks of the Prothonotary. The Chief Justice says: "The motion to dissolve was made more than three months after the order of April 7th, as appears by the docket entries."

It should be clearly manifest from reading the record, that the motion to dissolve was made before April 7th, and a decree thereon filed upon that day as follows :

"The demurrer is overruled with leave to answer; the order for inspection is allowed ; upon the return thereof the motion to dissolve the special injunction will be determined."

This decree is indorsed filed April 7th, 1888.

It cannot be doubted that a decree which determines a question is evidence conclusive that the question has been presented in a proper manner, either by writing filed, or by a motion made at bar.

Decrees of Court should stand alone. Strong in their inherent strength, and the unquestioned faith which the profession and the judiciary have accorded to them, their force is weakened by argument or evidence.

It is with great reluctance therefore that we yield to the temptation to appear to verify our decree by evidence.

Had Mr. Keely then made the motion to dissolve the injunction before our order os April 7th ?

On pages 7 and 8 of Mr. Keely's paper book we find the following: "He also entered a rule for an inspection of the Keely Motor. The defendant having interposed a demurrer to the bill, and also having entered a rule to dissolve the special injunction, which was supported by numerous affidavits, and argument having been had upon the questions presented, the court, on the 16th day of March, 1888, filed an opinion in the following words, to wit:

On page 10 the decree is set out as follows: "The demurrer is overruled with leave to answer. The order for inspection is allowed ; upon the return thereof the motion to dissolve the special injunction will be determined."

In Mr. Wilson's paper book the same facts are set out. It is likewise reported, not only that Mr. Shapley forcibly urged them in argument, but also that they were admitted by Mr. Keely's counsel in open court.

It appears then from the record; from the decree of the court; from the paper books; from the argument of Mr. Shapley; from the admission of Mr. Keely's counsel, and from Justice Mitchell's opinion, that the motion to dissolve was made before the order of inspection of April 7th.

Doubtless the learned Chief Justice was misled by that portion of Mr. Keely's paper book wherein is set out the docket entries of the Prothonotary's clerk. On page 3, under the head of "Docket Entries," there is the following entry: "October 25, 1888. Rule to dissolve injunction against John W. Keely."

It is scarcely necessary to say that the records of causes are the papers filed therein upon which the court has acted.

and which set forth the action of the court; and that docket extries are merely short minutes made by the clerks of the Pro- thonotary to indicate the steps taken, and form no part of the records.

Commonwealth ex Relatione John W. Keely

vs. Howard Perkins, Superintendent of

the Philadelphia County Prison.

Contempt- Commitment for ”Jurisdiction” Preliminary injunction” Motion to dissolve” Order of Court against

defendant before issue joined not enforceable by attachment.

Upon a bill in equity, by one claiming to be the assignee of the defendant's machine or device, to restrain defendant from assigning or selling the machine, &c., the Court granted a preliminary injunction and subsequently made an order requiring the defendant to exhibit, operate and explain his machine to plaintiff and experts appointed by the Court, for the purposes of the hearing and adjudication of the case. Afterwards the Court committed the defendant for contempt for disobedience of this order.

Held: on habeas corpus, that at the time of said order no answer was filed, and the order having been made in advance of issue joined, was improvident, and could not be enforced by attachment.

Semble: that a committal for contempt should set forth the nature of the contempt and such facts as show jurisdiction.

Mitchell, J.. concurs, on the ground that the record does not show a motion to dissolve the injunction pending at the time of the order complained of.

Charles B. Collier, J. Jos. Murphy and Wayne Mac- Veayli, Esqs., for Keely, the appellant.

Metsrs. Strawbridge <f- Taylor, and A. .S'. L. Shieds and Rufus E. Shapley, Esqs., for appellee.

January 28, 1889. Opinion by Pax- Sox, C. J.

This was a writ of Habeas Corpus. The relator complains that he is unlawfully restrained of his liberty by the Keeper of the Philadelphia County Prison. The respondent makes return that he holds the relator by virtue of the following commitment:

"Be it remembered that on 17th day of November, 1888, on motion of

-, Esquire, the Court ordered, and now the said John W. Keely having been brought into Court by the attachment issued in these proceedings, and having been required by the Court to purge himself of the contempt of which he is convict, or show cause why he should not be further dealt with as to the Court may appear proper, and the saidJohn W. Keely not having purged himself of said contempt, and not having shown cause why he should not be further dealt with. After hearing the said John W. Keely, and after full consideration, it is decreed and adjudged that for the said contempt the said John W. Keely shall be committed to the county prison, to be there kept and confined until he shall have purged himself of said contempt, and until he shall have been legally discharged from custody."

Upon the presentation of the petition with a copy of said commitment to Justice Sterrett, in vacation, he allowed the writ returnable before him at Chambers. Upon the return of the writ the hearing was continued to the 12th of January, before the Court in bane, and the relator was admitted to bail in the meantime. This was the course pursued in Commonwealth ex rel. Torrey vs. Retner, 92 Pa., 372. See also Hammel Vk. Bishop, 9 W., 416, and Commonwealth vs. Newton, 1 Grant, 453.

We might well discharge the relator upon the insufficiency of the commitment. It is not only vague, but it wholly fails to show the nature of the contempt for which he was committed. As we do not review such cases upon the merits, and only inquire into them so far as to ascertain whether the Court had the jurisdiction or power to make the order, it is manifest that in many instances the part would be remediless unless the commitment sets forth such facts as show jurisdiction. We are not asked, however, to decide the case upon technical grounds.

A certiorari having been issued to the Court below, we have before us the record of the case of Wilson v. Keely, and from it we learn that the alleged contempt consists in a refusal to obey an interlocutory order. If the Court had the power to make the order, we have no doubt it possessed the power to enforce it by attachment, and if necessary, by imprisonment. It is true, under the Act of June 16,1836, the punishment of imprisonment for contempt is limited to such contempts as shall be committed in open Court. It is also true that obedience to the lawful process of the Court may be enforced by attachment. Imprisonment for contempt committed in open Court is imposed as a punishment, and is for a definite period. Imprisonment for disobedience to the process of the Court is not so much for a punishment as to enforce such process, and ceases the moment the party purges

himself of his contempt by obedience. The power in both instances is essential to the existence of the Court. A Court that has not the power to protect itself from public insult, or to compel obedience to its lawful process, would be beneath contempt. As to the authority of the Court to enforce obedience to its process by attachment, I refer to Tom's Appeal, 50 Pa., 285; Com'th vs. Reed, 59 Id., 425, in which the subject is fully discussed.

If the Court below had jurisdiction of the parties and the subject matter, and the order in question was lawfully made, it possessed the power to enforce it by attachment. It is almost needless to say that the converse of this proposition is equally true. This involves a brief examination of the nature of the proceedings.

Bennett C. Wilson filed his bill in the court below against John W. Keely, claiming to be the assignee of said Keely of a certain principle or machine known (by Keely) as a reacting vibrating machine, being an independent motor or self-acting, having a revolving globe and other appliances, the said globe being the centre for the dispensation of said motion and power, and when all the actual power is produced, dependent only on itself for this production and reaction unlimited. The bill avers that since said assignment the defendant has received divers large sums of money from the exhibition of, and sale of interests in, and from the unlawful use of said invention, and prays discovery relative thereto; that the defendant has neglected and refused to permit complainant "to have access to and examine the drawings, models and machines embodying the invention referred to in the arrangement hereinbefore named in the possession and under the control of said defendant;" that complainant believes that the defendant, unless restrained by an order of this court, will sell and assign said invention to others, and dismantle and alter said motor. The prayers for relief, briefly stated, are, that the defendant be enjoined from removing the machines or models known as the "Keely Motor" from the shops where the same are now located, from selling, assigning or using the same, and particularly that the defendant be compelled to forwith "exhibit to your orator and permit him to inspect all models, machines, drawings and descriptions in the possession of the defendant, of the invention referred to in the above named assignment, and known as the Keely Motor."

Upon the filing of the bill, the Court below granted an ex parte injunction, which was afterwards continued until the further order of the Court. A demurrer was filed by the defendant, which appears to have been overruled, with leave to answer over; a commission of experts was appointed to examine the machine [See 5 Lancaster Law Review 167], who reported to the Court on October 20th, 1888. A rule for an attachment against the defendant on October 24, 1888, and upon the 25th of the same month the defendant took a rule to dissolve the injunction. I have referred to only a few of the docket entries; they are very numerous, and indicate an especially active, hostile litigation, culminating, November 17, 1888, in the commitment of the defendant to the county prison for contempt. The said commitment was based upon disobedience to the order of Court of April 7, 1888. The order was as follows:

"And now, April 7,1888, in accordance with the opinion heretofore filed in this case, it is hereby ordered by the Court that the defendant, the said John W. Keely, shall, within thirty days, exhibit to the said plaintiff, his attorneys, and to Charles Cresson, Thomas Shaw, Prof. William D. Marks, and Jacob Naylor, Esq., who are hereby appointed by the Court as experts, the inventions, machines or devices referred to in the plaintiff's bill, and now known as the 'Keely Motor,' and shall then and there, in their presence, operate the same, or cause them to be operated, and explain the modes of constructing and operating to them. And the said experts are hereby authorized and directed to make such an examination of said machines as will enable them to inform the Court as to their identity in construction, principle or operation, with the invention discribed in the complainant's bill as having been assigned him in 1869 by the respondent, the said complainant giving the said experts such a particular description of the last mentioned invention as may be necessary to enable the comparison to be made: and the said experts shall further make such drawings of the machine known as the "Keely Motor" as they may consider necessary for the information of the Court, and report jointly or severally; and it is further ordered that the information obtained by this inspection by the complainant and his counsel, or by the said experts, shall not be used for any other purpose than for the proper hearing and adjudication of the present proceeding."

At the time this order was made the cause was not at issue. No answer had been filed, and of course there was no examiner or master. At this stage no legal testimony could have been taken. The plaintiff had obtained his special injunction, which was duly continued within the five days.

There was then no further step which the plaintiff could properly take except to put the case at issue. After issue joined, an examiner could have been appointed, and the proofs taken in an orderly manner. Instead of so proceeding, a commission of experts was appointed to examine the defendant's machine, and the order of April 7th was made, by which the defendant, in advance of any issue, was not only required to exhibit his machine, but also to operate it and explain the mode of its construction and operation, although it clearly appeared that it would require considerable expense to clean the machine, put it together and operate it. The defendant appears to have been willing to exhibit it, and in point of fact did so. In view of this, I have not considered it necessary to review the authorities upon the question of the power of the court to compel him to exhibit his machine before issue joined. That he might have been compelled to do so at a proper stage of the cause is conceded. But to make an order not only to exhibit, but to operate it, the practical effect of which was to wring from him his defence in advance of any issue joined, was an excessive and improvident exercise of chancery powers. It is the more remarkable from the fact that the plaintiff's case, as shown by the exhibits and drawings, was sealed up in an envelope and retained by the court, access to the same being not only denied to the defendant, but even to the experts appointed by the court.

It is not necessary to discuss the question, how far the motion to dissolve the injunction justified the proceedings. Upon that motion the defendant was the actor, and if his affidavits failed to satisfy the court that the injunction should be dissolved, his motion would necessarily fall. Aside from this, the motion to dissolve was made more than three months after the order of April 7th, as appears by the docket entries.

We are of opinion that the order referred to was improvidently made. It follows that the learned court had no power to enforce it by attachment.

The relator is discharged.

Concurring opinion by Mitchkll, J.

It was stated without challenge at the argument that the relator had made a motion to dissolve the injunction before the order of April 7th, 1888, and the concluding sentence of the opinion of the learned President of the Court below indicates that such was the fact, and that the order was made with special reference to a hearing on that motion.

If that fact were before us, I should be of opinion that the inspection directed by the order was within the regular powers of a Court of equity, especially where it was concurred in by the relator himself for several months, nominally complied with, and not objected to until he found it was to be a real examination, which was to bring his discovery to a genuine test before a competent mechanical tribunal.

But the record, unfortunately, does not show any application to dissolve the injunction until October 25th, several months after the order for inspection; and as, on a hearing of this kind, we can review only the regularity of the proceedings upon their face, we are bound by the dates as they appear on the record.

Upon this ground, I concur in the opinion of the Court that the order for inspection was premature, and the commitment for contempt in not obeying it was therefore improvidently issued.

Keely vs. Wilson.

January 28,1889. Opinion bv Paxsox- C. J.

For the reasons given in Commonwealth ex relatione John W. Keely v. The Superintendent of the Philadelphia County Prison, ante, **the order of the Court below, of date of November 17th, 1888, committing the said John W. Keely to the county prison for contempt, is reversed and set aside.** Legal Intelligencer.

Lancaster Law Review.

MONDAY, APRIL 1,1889. [No. 18, Vol. VI.]

Common

C. P. OF LANCASTER COUNTY.

Keely

"*I have been repeatedly urged to repeat my disintegrations of quartz rock, but it has been utterly out of my power to do so. The mechanical device with which I conducted those experiments was destroyed at the time of the* ***proceedings against me****. Its graduation occupied over four years, after which it was operated successfully. It has been originally constructed as an instrument for overcoming gravity, a perfect, graduated scale of that device was accurately registered, a copy of which I kept, I have since built three successive disintegrators set up from that scale, but they did not operate. This peculiar feature remained a paradox to me until I had solved the conditions governing the chords of multiple masses, when this problem ceased to be paradoxical in its character. As I have said, there are no two compound aggregated forms of visible matter that are, or ever can be, so duplicated as to show pure, sympathetic concordance one to the other. Hence the necessity of my system of graduation, and of a compound device that will enable anyone to correct the variations that exist in compound molecular structures, or in other words to graduate such, so as to bring them to a successful operation.*" [Keely] [Snell Manuscript - The Book, MINERAL DISINTEGRATION, page 7]

ChatGPT analyses of Keely condemned to jail, who was involved, why and his release. 12/16/24: https://chatgpt.com/share/675fbce4-c60c-800d-a951-3078e55afe70

ChatGPT reviews Was Keely a Fraud?: https://chatgpt.com/share/67478a02-7c5c-800d-8d97-a31642ce93d0

See Also

Bennett C. Wilson
Chronology
Etheric Force Identified as Dynaspheric Force
Fake News
Helpers on the Road and Hinderers
Keely in Contempt of Court
Keely in Contempt of Court2
Keely Motor Company
Keelys Sunday in Jail
Law Suit
Moyamensing Prison
stock company fraud
The Keely Motor Experts
The Key to the Problems. - Keelys Secrets
The Motor Gets Into Court
Was Keely a Fraud
Was Keely Imprisoned for stock fraud
Yellow Journalism