

12166

No.

Supreme Court of Illinois

Eddy

vs.

People

71641 7

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Jas B. Eddy

People v. ex. v. ce.

8. P. D.

12166

Prepared

1854

United States of America
State of Illinois
County of Cook

J. J.

Plas before the Honorable Mark
Skinner Judge of the Cook County Court of
Common Pleas within and for the County of Cook
and State aforesaid at a regular term of the
Cook County Court of Common Pleas begun and
holden at the Court House in the City of Chicago
in said County on the first Monday being the
seventh day of February in the Year of our
Lord one thousand eight hundred and fifty-
three and of the Independence of the United States
the seventy seventh.

Present the Honorable Mark Skinner Judge
Daniel Mc Elroy Prosecuting Attorney
Cyrus P. Bradley Sheriff
Attest Walter Kimball Clerk

Let it be remembered that hereto-
fore, to wit, on the eighth day of Febru-
ary in the Year Eighteen Hundred and fifty-
three Sarah Eddy, Charles V. Oyer and
R. W. Lyon by J. Goodrich their attorney
filed in the Cook County Court of Common
Pleas an application in writing, in words

as follows. to wit, Sarah Eddy wife of
Ira B Eddy, Chas V Oyer and R. W Lyon
represent to the Judge of the Cook County
Court of Common Pleas, that Ira B Eddy
has Estate real & personal, and apply to
this Court to order a jury to ascertain whether
said Ira B Eddy (who is a resident of Cook
County) is a lunatic or distracted person

Sarah Eddy.

Oyer & Lyon

by C. Groverick

their atty

And thereupon, on the same day, to wit,
the Eighth day of February in the year aforesaid,
the said day being one of the days
of the said February term of the Cook
County Court of Common Pleas in the year
aforesaid, the following proceedings were
had in said matter, and entered of Record
in said Court, to wit,

In the Matter of the Application
of Sarah Eddy, Charles V Oyer & R
W Lyon for a Jury to ascertain
whether Ira B Eddy be a lunatic
or distracted person

Sarah Eddy wife of Ira B
Eddy, and others having represented to this
Court, that the said Ira B. had Estate real
and personal, and that said Ira B was
a lunatic, and resident of the County of Cook

On application of said Sarah and others, it is Ordered that a Jury come to ascertain whether said Ira B Eddy be a lunatic, whereupon come a jury of good and lawful men to wit, John Welch, Christopher Lehman, Ezra Alger, John Moore, J. Buckmaster, Daniel Booth, Wm. Hufferon, John Parker, Peter Bryant, Thomas Shepard, Robert Angus and George Chackfield who having been duly sworn, and after hearing the proofs and allegations, retire to consider of their verdict and afterwards come the said Jurymen to Court and say to the Jury find Ira B Eddy to be an Insane person.

And the Court having heard the evidence produced, determines that the amount of the Estate of said Ira B Eddy to be of the value of Forty thousand Dollars, and hereby appoints and constitutes Devotion C. Eddy Conservator of the Estate real and personal of the said Ira B Eddy, with authority to exercise all the powers and duties as such Conservator by the Statute given in such cases made and provided, upon his entering into bonds with security to be approved by the Court in the penal sum of Eighty thousand Dollars, according to the Statute in such case made and provided.

And afterwards to wit on the Ninth day of February in the year aforesaid, the said D C Eddy filed in said Court a bond, which said bond is in words and figures as follows to wit

Know all men by these presents, that we
J. C. Eddy Rockwell M Lyon John Cachoan
am justly held and firmly bound
unto the Treasurer of the County of Cook in the
penal sum of Eighty thousand Dollars which
payment well and truly to be made we bind
ourselves & our personal representatives firmly
by these presents, sealed with our seals and dated
this eighth day of February A D 1853.

The condition of this obligation is such
that whereas the above named Devotion Eddy
was by the Cook County Court of Common Pleas
named & appointed Conservator of Ira B Eddy
by said Court declared a lunatic. Now if the
said Devotion Eddy as such Conservator shall
honestly & faithfully collect and manage such
estate, money goods & property belonging to
said lunatic and discharge with fidelity
the duties & obligations of such Conservator
as the law in such cases direct & requires and
account for the same as by law he is bound
& may be required, then this obligation to be void
otherwise to remain in full force and virtue

Approved

Feb 9 - 1853

Mark Skinner

Judge Cook

County Court Common Pleas

J. C. Eddy Seal

R. M. Lyon Seal

John Cachoan Seal

Erastus Borren

A D Taylor Seal

And afterwards to wit, on the Eleventh day of March in the year aforesaid. the said day being as yet of the said February term of said Cook County Court of Common Pleas. Dra B Eddy by Tracy & Cameron his Solicitors filed in said Court a Petition and Motion, which said Petition and Motion are in words and figures as follows. to wit.

In the Matter of the Application
for an Enquiry into the sanity
or insanity, lunacy, or distrac-
tion of Dra B Eddy.

In the Cook County Court
of Common Pleas
State of Illinois }
County of Cook } ss.
To the Honorable Mark Skinner
Judge of said Court.

Dra B Eddy of said County
the party aforesaid, by Tracy & Cameron his Solicitors
comes and represents unto your Honor that he
believes that he can make a good and satisfactory
defense in the matter of the application aforesaid,
and that he believes that he can produce satisfac-
tory and conclusive evidence that at the time
of the trial of said matter and of the rendition
of the verdict therein he was not, and is not a
lunatic or an Insane or distracted person,
and further represents that at that time he was not
and is not a lunatic or an insane or distracted.

persons. and he prays Your Honor to order that
the verdict & judgment rendered and made
therein be set aside and declared for naught,
and that the order of appointment of the Con-
servator be revoked, and a new trial of said
matter be ordered by Your Honor. And that
Your Honor may grant such further and other
relief in the premises as to Your Honor shall
seem meet. and Your Petitioner will ever
pray.

Ira B Eddy
by Tracy & Cameron
His Solicitors

State of Illinois }
County of Cook } S.S.

Edith Paine being first duly
sworn doth depose and say that at the time of
the trial mentioned in the within petition he
was, and is well and intimately acquainted
with Ira B Eddy mentioned therein and that
he this affiant has read the foregoing petition
and verily believes the statements matters and
things therein contained to be true.
Subscribed & sworn Edith Paine
to before me this 11th day

of March 1853.

W Pemball, C.R.

In the matter of the application }
for Enquiry into whether Ira B }
Eddy is a lunatic or an insane }
or distracted person or not }

And now comes the said Ira B Eddy
by Tracy & Cameron his attorneys and counsel

the Court to set aside the verdict and judgment heretofore rendered and made herein and to order that the order appointing the Conservator in said matter be set aside and be declared for naught.

1st Because the law under which the proceeding therein has been had is contrary to the Constitution of the United States, and Contrary to the Constitution of the State of Illinois.

2^d Because said Eddy had no notice of said application or of said proceeding or trial.

3^d Because the said Eddy was not at the time of said trial and is not a lunatic or an insane or a distracted person.

4th Because the Verdict was not sustained by the evidence.

5th Because evidence was permitted to go to the Jury not pertinent to the issue.

Tracy & Cameron

Solicitors for said

Jas B Eddy.

And afterwards to wit on the Seventeenth day of March in the year last aforesaid the said day being as yet of the said February term of said Cook County Court of Common Pleas the following further proceedings were had in said cause and entered of Record to wit

In the Matter of the application
of Sarah Eddy Charles H. Gyer
& R. W. Lyon, for a Jury to
ascertain whether Ira B. Eddy
be a lunatic or distracted person

And now at this day comes the said Ira B.
Eddy by Tracy & Cameron his attorneys, and
the said Petitioners by Grant Goodrich their
attorney also comes, and after argument heard
on the Petition and Motion of the said
Ira B. Eddy filed herein to set aside the Verdict
and Judgment heretofore rendered herein, and
to set aside the Order appointing a Conservator
in this cause. The Court being now fully advised
in the premises denies the prayer of said pe-
tition, and overrules said Motion, to which
said decision and ruling the said Ira B. Eddy by his said
attorneys then and there excepted.

State of Illinois }
County of Cook } S.S.

I Walter Kimball Clerk of the Cook
County Court of Common Pleas within and for the
County & State aforesaid, do hereby Certify that the
 foregoing is a true and correct Transcript of
the papers filed in said matter, and of the Orders
made in said cause, and entered of Record
in said Court, as appears from the Original Papers
and Records of said Court now on file in my
office.

In Testimony whereof I have
hereunto set my hand, and
affixed the seal of said Court at

the City of Chicago in said County
this 10th day of June A.D. 1854
Walter Kimball
Clerk

8
Supreme Court.

The People
Ex Rel.
vs
D. B. Odell.

Filed June 14. 1854.
H. Ireland Clk.

\$5.00. Ireland

Ind

The People

vs
Mr B Eddy - 3

The proceedings to be reviewed, are founded on the Statute in relation to Trials or Summaries, Page 276 of the New Statutes

1st The first objection to the proceedings is that the Statute authorizing it, is unconstitutional
To this I shall offer no answer

2d It is avowed Eddy had no notice of the proceedings -

It is true it does not affirmatively appear that notice was given - But I suppose in this proceeding, it will be presumed that all the preliminary steps requisite to give the Court jurisdiction were taken. That prima facie every thing was done to give jurisdiction, & all the proceedings were regular - And that it must be shown affirmatively in some way that notice was not given, if notice was essential.

Some days after the verdict & during the same Session of the Court which the proceedings were had, Eddy by his counsel appears and moves for a new trial, stating in belief

he can prove he is not now a lunatic -
~~If there had been no notice~~ He says nothing
about want of any notice, nor does
his friend Mr. Paine who makes the af-
fidavits for him - This was evidently
an after thought, suggested to his coun-
sel, ~~Notice not~~ the need not showing
his appearance nor notice - If there had
been want of notice, some evidence should
have been introduced, to rebut the prima facie
case of ~~the~~ which the law makes

- 3^d But I contend no notice was necessary -
The Legislature had a right to institute precedents
such proceedings as they saw fit for the pro-
tection of such unfortunate persons &
their property as they saw fit -
They claim to be like infants, the subjects
of its care & protection. The Legislature may
order the sale of infants estate without
judicial proceedings or notice to the
infant -
When the Legislature enacted this statute
they had a right to provide such a course
of proceedings as they saw fit -
They do not require notice to be given
to ~~the~~ one charged with Annuity

The Statute being silent as to notice, unless at common law or well established practice in English Chancery, no notice would be required -

That notice is not a legal duty, a practical duty the Court jurisdiction is manifest. There are cases in which it cannot be done, & others in which if it were done, the act would be nugatory.

1st When the Sumatra is out of the State -

2^d When the Sumatra is arriving or necessarily confined

This is decided in 1st Richard on Equity Reports vol. 1st page 474.

The Court say, "from the authorities they think notice was not necessary."

It is plainly infirmed from the case of Ex parte Hall 7 Vesey 361 - Though notice was ordered in that case, under the circumstances, the Court would not grant the injunction because the notice had not been as large as was ordered.

The Court decide notice is not necessary in Ex parte Southwell, 1 Vesey 402.

In 2 Johns Chy 124 an injunction was ordered when the Sumatra was out of the State & oral estate ordered to be sold. No notice was given, it would have been nugatory if given

Though it is the usual practice for the Court to order notice, in ordinary cases it is done by Courts on applications for such proceedings, yet it is clearly not indispensable, This is in the discretion of the Court, and the want of it, is not fatal to the jurisdiction of the Court.

In cases of idiots, it would be a work of supererogation, If the legislature had intended to give notice, or alter the English practice they would have provided for it - But they could make no such arrangement, because in cases of non-residents, notice could not be given -

Though the record in this case does not show the fact, Mr. Shumway did not examine some of the witnesses for Edg -

II

It is objected that the petition could not be signed by agent or counsel - It will be found that the agent was authorized to make the signature. If the ^{petitioner} party could not write, any one could sign for them.

It is also stated that the petition was not the act of the principal, nor

that it was not done for & at the act
of Mrs. Eddy.

It was in the nature of a bill or
petition on the Chancery side of the Court,
and no one will dispute the right of
Counsel or agent to sign the name
of his client or principal on such bill
or petition.

It is admitted that the proceedings
were not as formal, & the petition
drawn with the care which is
advisable in such cases, but
there were circumstances of immediate
action and necessity by those in-
trusted to save the property of
Mrs. Eddy from waste & immediate
disipation, which do not appear
in the record, & which it would
be improper to narrate.

The Court below with a full knowledge
of all the facts denied the application
for a new trial, & the Court will presume
upon sufficient grounds, if enough
appears to give the Court below juris-
diction in the premises.

Ira B. Eddy

vs

The People of

the Co. of

Supreme Court. 1854

2^d Principal

And now comes the said

Ira B. Eddy by Robert S. Blawie
and Elisha W. Gray, his
attorneys and says that in
the record of the proceeding and
recitation of the decree and
judgment aforesaid manifest
error hath intervened to his
prejudice in this to wit:

1. Because it appears by the
said record that the said
Cook Court let of Com-
P^{er} erred in entertaining
an application in the case
which did not contain the
the necessary allegations required
in order to bring ^{the case} within the
Statute and give it to the
the proper jurisdiction of the
said court.

2. Because it appears as
aforesaid that said Court
~~this Court~~ also and further erred not
in entertaining the petition at
the ~~petition~~ ^{petition} of parties who
did not personally sign it or
appear, and when said petition
affirmation was not sworn to.

3. Because said Court let
of error is it so appears

also and further cited in Ex. 10
said application and receiving
it's there and judgment
said case when no summons
or any notice had been made
of said proceeding to the
Hon B. J. J. J.

4. Because said Court let
stand as it is as before
appears also and full error
therein is not sustaining
but is overruling said
motion or petition so
made as appears of
said Hon B. J. J. J.
his stamps.

And the same I
do hereby certify
by this return.

Witness my hand
at the same place
and day as before
in presence of the

Robert L. Blalock
John W. Jones
John B. J. J. J.

present and can
be opened by
the same person
and for nothing
as far as can be
he may be with
both things which
he may have with
by some thing.

Elisha W. Tinsley
attorney at law
Hannover

And the said People
Come now by that
no such error have
been made.

By Goodrich. Atty. in
Hannover

Filed June 24 1854.

L. Ireland Clerk