

YOUNG v. GRUNDY.

Appeal.—Dissolution of injunction

No writ of error or appeal lies to an interlocutory decree dissolving an injunction.¹ If the answer neither admits nor denies the allegations of the bill, they must be proved on the final hearing; but upon a question of dissolution of an injunction, they are to be taken to be true.²

THIS was an appeal from an interlocutory decree of the Circuit Court of the district of Columbia, dissolving an injunction.

E. J. Lee, for the appellant.—The decree dissolves the injunction with costs; which is a final decree as to the costs. *Davenport v. Mason*, 2 Wash. 200.

The material facts of the bill are not denied nor admitted by the answer; they are, therefore, to be taken as true. The court below must, therefore, have proceeded on the ground, that the original equity between the maker and payee of the note did not affect the indorsee.³

MARSHALL, Ch. J.—If the answer neither admits nor denies the allegations of the bill, they must be proved upon the final hearing. Upon a question of dissolution of an injunction they are to be taken to be true.

But the court has no doubt upon the question. *No appeal or ^{*52]} writ of error will lie to an interlocutory decree dissolving an injunction.

Writ of error dismissed, with costs.

*Ex parte WILSON.**Habeas corpus.*

The writ of *habeas corpus ad subjiciendum* does not lie, to bring up a person confined in the prison-bounds upon a *ca. sa.* issued in a civil suit.⁴

WILSON petitioned the court for a writ of *habeas corpus*, and a *certiorari*, to bring up the record of a civil cause in which judgment had been rendered against him, upon which a *ca. sa.* has issued, by which he was taken and was now in confinement within the prison-bounds upon a prison-bounds bond. His petition stated, that the marshal had demanded of the creditor the daily allowance for the prisoner, agreeable to the act of congress, concerning insolvent debtors within the district of Columbia (2 U. S. Stat. 240, § 15), which the creditor had refused to pay, in consequence of which the marshal had no longer any authority to detain him.

The act of congress provides that the circuit court of the district of Columbia shall, by a general order, fix the daily allowance for the support of prisoners in execution for debt in civil suits, and that “no person, taken in execution for debt or damages in a civil suit, shall be detained in prison therefor, unless the creditor, his agent or attorney, shall, after demand

¹ *Gibbons v. Ogden*, 6 Wheat. 448; *Hiriart v. Ballon*, 9 Pet. 156; *McCollum v. Eager*, 2 How. 61; *Verden v. Coleman*, 18 Id. 86.

² *Poor v. Carleton*, 3 Sumn. 70.

³ For a decision on the merits, see 7 Cr. 548.

⁴ *Wilson v. The Marshal*, 1 Cr. C. C. 608. See *Ex parte Randolph*, 2 Brock. 448; *Ex parte Reardon*, 2 Cr. C. C. 639; *Ex parte Robinson*, 1 Bond 39.

O'Neale v. Thornton.

thereof by the marshal, pay, or give such security as he may require, to pay, such daily allowance, and the prison fees.

The marshal refused to discharge the petitioner ; and his counsel, *E. J. Lee*, now moved for a *habeas corpus*.

MARSHALL, Ch. J., after consultation with the other judges, stated, that the court was not satisfied *that a *habeas corpus* is the proper [*53] remedy, in a case of arrest under a civil process.

Habeas corpus refused.

O'NEALE v. THORNTON.

Sales of lands in Washington.

The act of assembly of Maryland, which authorized the commissioners of the city of Washington to resell lots for default of payment by the first purchaser, contemplates a single resale only ; and by that resale the power given by the act is executed.

By selling and conveying the property to a third purchaser, the commissioners precluded themselves from setting up the second sale, and the second purchaser, by making this defence, affirmed the title of the third purchaser.

Thornton v. O'Neale, 1 Cr. C. C. 269, reversed.

ERROR to the Circuit Court of the district of Columbia, sitting in Washington, in an action of *assumpsit*, upon a promissory note, dated August 6th, 1800, payable in nine months thereafter, and given by O'Neale to William Thornton, surviving commissioner of the city of Washington, for the purchase-money of lots No. 1 and 2, in the square No. 107, in that city.

The defence set up by O'Neale was, that there was no consideration for the note, inasmuch as the superintendent of the city, who (by virtue of the act of congress passed the 1st of May 1802, entitled "an act to abolish the board of commissioners in the city of Washington, and for other purposes," 2 U. S. Stat. 175) succeeded to all the powers, duties and rights, of the late commissioners, whose office was abolished by that act, had abandoned or rescinded the contract of sale, by having sold and conveyed the same lots to another person in fee-simple.

The bill of exceptions taken at the trial, stated, in substance, the following case : The states of Virginia and Maryland, having, in the year 1789, offered to the United States a cession of territory, ten miles square, for the permanent seat of government, the United States, by the act of congress of the 16th of July 1790 (1 U. S. Stat. 130), entitled "an act for establishing the temporary and permanent seat of the government of the United States," accepted the same, and authorized the president *to appoint certain [*54] commissioners for the purpose of carrying the act into effect. In the summer of 1791, the greater part of the proprietors of the land included within the present bounds of the city of Washington, conveyed the same to Thomas Beall, son of George, and John M. Gantt, in trust, to be laid out as a city, and that after deducting streets, avenues and public squares, for the use of the United States, the residue should be equally divided ; one moiety to be reconveyed to the original proprietors, and the other, to be "sold at such time or times, in such manner, and on such terms and conditions as the President of the United States, for the time being, shall direct ;" the purchase-money to be paid over to the president as a grant of money, and to be