

Texas *v.* White.

TEXAS *v.* WHITE.

ORIGINAL.

No. 4. Orig. December T., 1869. — Decided February 7, 1870, and November 11, 1870.

A defendant in equity is required to pay into court for the benefit of complainant money received by him pending the litigation, before service of process but after knowledge of the complainant's equity.

A rule is granted without affidavits, under the circumstances of this case, (though the practice is irregular,) to show cause why money should not be paid into court for the benefit of complainant.

THESE were two motions made after the entry of the final decree in *Texas v. White*, 7 Wall. 700, 741. The first motion which was for the payment of money into court related to the defendant, Stewart, who is mentioned in the note on page 702 of the report of that case. In the second, (for a rule *nisi* to show cause why money should not be paid into court,) the motion was for a rule upon George W. Paschal. The result of the granting of this rule is reported in *In re Paschal*, 10 Wall. 483.

MR. CHIEF JUSTICE CHASE delivered the opinion of the court on the first motion, February 7, 1870.

This is a motion in behalf of the complainant for an order upon the defendant, Stewart, to pay the amount of the money received by him pending the litigation into court.

The decree in this cause heretofore rendered, found that the complainant was entitled to recover certain bonds and coupons, and any proceeds thereof which had come into the possession or control of the defendant, with notice of the equity of the complainant; and further that the defendant, Stewart, was accountable to the complainant to make restitution of four of said bonds, numbered 4230, 4231, 4235, and 4236, with the coupons attached, or make good the proceeds thereof.

The decree as to Stewart was rendered *pro confesso*, and a motion was made to set it aside, and for a new hearing, on the ground that the proceeds of the bonds were paid to him before serving of process; but on consideration, the court being satisfied that the payment of the bonds was received by him pending the litigation, and, though before service of process on him, with notice of the equity of the complainant, denied the motion.

Upon the principle of this decision the complainant is entitled to the order for which the motion asks, and it will be allowed.

## Cases Omitted in the Reports.

The clerk is directed to ascertain the amount received by the defendant, Stewart, which amount the defendant is required to pay into court, for the use of the complainant, within thirty days from the date of this order, February 7, 1870. *Motion granted.*

*Mr. George W. Paschal* for the motion. *Mr. James Hughes* opposing.

MR. JUSTICE CLIFFORD delivered the opinion and order of the court on the second motion November 11, 1870:

Responsive to the motion submitted by *T. J. Durant* in this case: Ordered, that a rule *nisi* issue to George W. Paschal, returnable on Friday next, to show cause, if any, why the rule prayed in the motion shall not be granted — that he, the said Paschal, pay to the clerk of this court for the benefit of the complainant, the sum of forty-seven thousand three hundred and twenty-five dollars, gold, received by him in behalf of the complainant in said cause, as alleged in the pending motion.

Motions for such a rule ought regularly to be accompanied by an affidavit verifying the facts on which they are grounded, and, when not so supported, they will not in general be entertained by the court for affirmative action; but the docket entries and papers in the case show that due notice was given to the respondent before the hearing, and inasmuch as the respondent appeared by counsel and admitted that he had received the amount alleged in the motion, and expressed through his counsel his readiness to answer the motion upon the merits, the court think it proper to grant the rule *nisi*, giving leave to the parties respectively to file, at the hearing on the rule now ordered, such affidavits, pertinent to the issue involved in the rule, as they shall be advised are necessary to the present inquiry. *Rule granted.*

*Mr. T. J. Durant* for the motion. *Mr. A. G. Riddle* opposing.

On the 14th day of the same November, MR. JUSTICE CLIFFORD announced that, Mr. Paschal assenting, a rule would issue to him to show cause why his name should not be stricken from the docket in the case of *Texas v. Peabody's Executors* as counsel for the complainant. See *In re Paschal*, 10 Wall. 483.