
Opinion of Swayne and Miller, J.J., dissenting.

contract, she can have her legal remedy for the breach of it in her own courts.

But the case of Hardenberg differs from that of the other defendants. He purchased the bonds in open market, *bonâ fide*, and for a full consideration. Now, it is to be observed that these bonds are payable to bearer, and that this court is appealed to as a court of equity. The argument to justify a decree in favor of the commonwealth of Texas as against Hardenberg, is simply this: these bonds, though payable to bearer, are redeemable fourteen years from date. The government has exercised her privilege of paying the interest for a term without redeeming the principal, which gives an additional value to the bonds. *Ergo*, the bonds are dishonored. *Ergo*, the former owner has a right to resume the possession of them, and reclaim them from a *bonâ fide* owner by a decree of a court of equity.

This is the legal argument, when put in the form of a logical sorites, by which Texas invokes our aid to assist her in the perpetration of this great wrong.

A court of chancery is said to be a court of conscience; and however astute may be the argument introduced to defend this decree, I can only say that neither my reason nor my conscience can give assent to it.

Mr. Justice SWAYNE:

I concur with my brother Grier as to the incapacity of the State of Texas, in her present condition, to maintain an original suit in this court. The question, in my judgment, is one in relation to which this court is bound by the action of the legislative department of the government.

Upon the merits of the case, I agree with the majority of my brethren.

I am authorized to say that my brother MILLER unites with me in these views.

THE DECREE.

The decree overruled the objection interposed by way of plea, in the answer of defendants to the authority of the solicitors of

The decree.

the complainant to institute this suit, and to the right of Texas, as one of the States of the National Union, to bring a bill in this court.

It declared the contract of 12th January, 1865, between the Military Board and White and Chiles void, and enjoined White and Chiles from asserting any claim under it, and decreed that the complainant was entitled to receive the bonds and coupons mentioned in the contract, as having been transferred or sold to White and Chiles, which, at the several times of service of process, in this suit, were in the possession, or under the control of the defendants respectively, and any proceeds thereof which had come into such possession or control, with notice of the equity of the complainant.

It enjoined White, Chiles, Hardenberg, Birch, Murray, Jr., and other defendants, from setting up any claim to any of the bonds and coupons attached, described in the first article of said contract, and that the complainant was entitled to restitution of such of the bonds and coupons and proceeds as had come into the possession or control of the defendants respectively.

And the court, proceeding to determine for which and how many bonds the defendants respectively were accountable to make restitution of, or make good the proceeds of, decreed that Birch and Murray were so accountable for eight, numbered in a way stated in the decree, with coupons attached; and one Stewart (a defendant mentioned in the note at page 702), accountable for four others, of which the numbers were given, with coupons; decreed that Birch and Murray, as also Stewart, should deliver to the complainant the bonds for which they were thus made accountable, with the coupons, and execute all necessary transfers and instruments, and that payment of those bonds, or any of them, by the Secretary of the Treasury, to the complainant, should be an acquittance of Birch and Murray, and of Stewart, to that extent, and that for such payment this decree should be sufficient warrant to the secretary.

And, it appearing—the decree went on to say—upon the pleadings and proofs, that before the filing of the bill, Birch and Murray had received and collected from the United States the full amount of four other bonds, numbered, &c., and that Hardenberg, before the commencement of the suit, had deposited thirty-four bonds, numbered, &c., in the Treasury Department for redemption, of which bonds he claimed to have received payment

Statement of the case.

from the Secretary of the Treasury before the service of process upon him in this suit, in respect to which payment and the effect thereof the counsel for the said Birch and Murray, and for the said Hardenberg respectively, desired to be heard, it was ordered that time for such hearing should be given to the said parties.

Both the complainant and the defendants had liberty to apply for further directions in respect to the execution of the decree.

ROLAND v. UNITED STATES.

A grant of land in California, purporting to have been made by Governor Pio Pico, on the 2d of May, 1846, and insufficient on the archive papers, decided not to be helped by papers produced by the claimant; these being found by the court, upon the evidence in the case, not genuine, but an afterthought, and produced in court only because the growth of California had stimulated the cupidity of speculators to experiment with fragments of title-papers left unfinished by Pico, and which were gathered up by our officers on the conquest of the country.

APPEAL from the District Court for the Northern District of California, respecting a land claim, under the act of March 3d, 1851. The grant purported to have been made on the 2d of May, 1846, by Pio Pico; Moreno being secretary *ad interim*; this court having decided that, after the 7th July, 1846, Pico had no powers as governor. The claim was for "eleven leagues of land in California, at the junction of the San Joaquin and Stanislaus rivers." The expediente was obtained from the archives, and was among the papers of which Hartwell made an index. It consisted of a petition, marginal order that the title issue, decree of concession, and the borrador, or draft, of the title, to be given to the party interested. It differed from other expedientes in this: that there was no report, no diseño, no approval by the Departmental Assembly, and because the whole proceedings were begun and consummated on the same day. This document not being enough to establish the title, the claimant, in order to make it complete, produced from his own custody