plains. What the court did rule was, that Hoeppener's statements, made after he had conveyed the land to others, could not be admitted to invalidate his deeds. Surely such a ruling requires no vindication.

Finding no error in the record, the judgment is

AFFIRMED.

LUDLOW *v.* RAMSEY.

1. In a collateral proceeding, to set aside a sale made under a judgment of another court, it must be shown that such court had no jurisdiction of the case. It is not enough to show mere errors and irregularity.

   Hence it is not enough to set aside, in a collateral proceeding, a sale made under the attachment laws of Tennessee, that the affidavit on which the attachment issued did not state, as the code of Tennessee directs that such affidavits should do, that the claim to secure which the attachment process was prayed was "a just claim;" it stating such facts, however, as made the justice of the claim inferable almost as of necessity.

2. The doctrine of *Dean* v. *Nelson* (10 Wallace, 158), that judicial proceedings on a mortgage carried on within the Union lines, against a person driven, by way of retaliation for outrages committed by others, outside of those lines and prohibited from returning within them, does not apply to a person who went and remained voluntarily in rebellion. Such a person cannot complain of legal proceedings regularly prosecuted against him as an absentee.

3. A party had attached, in a State court, the property of a person who had left his home and engaged in the rebellion. Afterwards, on information by the government filed in a District Court of the United States, for confiscation of the property under an act of Congress, the attaching creditor intervened, as the act allowed him to do, to protect his prior right and secure his claim from the proceeds of the forfeited property when sold. The proceedings in confiscation having been terminated by a pardon to the person whose property had been proceeded against, the proceedings in attachment in the State court went on, and a purchaser of the property under them was put into possession by a writ of possession from the State court. *Held*, that whether such writ was issued by the State court in contempt of the Federal one or not was a question which could not be passed upon by a Federal court in a suit by the original owner of the property to set aside as void a sale made under the proceedings in attachment, and that such proceedings could not be

deprived of their legal validity by the ineffectual attempt at confiscation supervening upon them.

APPEAL from the Circuit Court for the Eastern District of Tennessee, the case being thus:

The code of Tennessee of 1857–8, under its chapter on "Attachments," enacts that a plaintiff after action for any cause has been brought may, when the sum claimed exceeds $50, on giving bond, &c., sue out an attachment at law or in equity against the property of a defendant in the following cases:

"Where he is about to remove or has removed himself from the State.

"Where he absconds or is absconding or concealing himself or property."

The code continues:

"In order to obtain an attachment, the plaintiff, his agent, or attorney, shall make oath in writing stating the nature and amount of the debt or demand, and *that it is a just claim.*"

Subsequent sections provide for notice of the attachment by publication, declaring that the attachment and publication are in lieu of personal service.

With these provisions of the code in force, Mrs. Cynthia S. White, having a suit pending against one Ramsey, applied, September 18th, 1863, to the State Chancery Court at Knoxville, Tennessee, for an attachment against a portion of the said Ramsey's property. The affidavit filed was thus:

"Your orator, Cynthia S. White, a citizen of Knox County, respectfully represents unto your honor that she holds a bond on J. G. Ramsey, dated July 17th, 1860, payable six months after date, with lawful interest from date, for $300, a copy of which note is hereunto appended, the original of which shall be produced in the final hearing of this cause. Your orator shows that the said Ramsey has left this State, or so conceals himself that the ordinary process of law cannot be served upon him.

Statement of the case.

He was the owner *of a considerable estate, both real and personal, in Knox County.* The premises considered, your orator prays that the said J. G. Ramsey be made a party defendant to this bill; that process of subpœna and attachment issue, and *that a sufficient amount of said estate be attached* to satisfy your orator's demand. She prays for publication, and, on the final hearing, she prays for the sale of said property, and for an account, if necessary."

A copy of a note, such as was described in the affidavit, was annexed to it, but as the reader will have observed, nothing is said in the affidavit as to the justness of the debt to secure which the attachment was prayed for.

Having given the requisite bond an attachment was issued, and a house and lot in Knoxville, belonging to Ramsey, was duly attached, as appeared by the sheriff's return to the writ, no personal property being found. At the January rules, 1864, order of publication was made in the Knoxville Whig, a newspaper published in Knoxville, to notify the defendant to appear on the first Monday of April, 1864, and make defence, or that judgment would be taken *pro confesso* against him. In October Term a decree was rendered for the amount of the debt, and directing the master to sell the property attached. The master duly advertised it for sale, and bid it off, January 3d, 1865, to one Vail for $5100. The sale was reported to, and confirmed by, the court, and a writ of possession was issued, but was opposed by persons occupying the premises. Subsequent proceedings, however, were taken, which finally resulted in putting Ludlow into possession, he having purchased the property of Vail.

Ramsey now filed a bill (subsequently amended) in the court below against Ludlow, to set aside the sale thus judicially made of the house and lot, and to recover the rents and profits. His allegation was that the property was sold for $5100, a sum which was not more than half its value, to pay a claim of $332; that he had another house just beside the one sold of less value than it, and two farms not far off, a limited number of acres of which might have been sold; all of which the sheriff certainly knew of; that he himself

knew nothing of the institution of the suit until long after the sale was made, and the decree confirmed.

He alleged further, that the proceedings by which the property was sold were null and void. Referring to the publication in the newspaper at Knoxville, giving him notice to appear and defend the original suit, or that judgment would be taken *pro confesso* against him, his bill alleged that he left Knoxville shortly before the Federal troops arrived; that at the time when the attachment was sued out, and when the publication was made, he was in no situation to see or know of the same; that Tennessee was held by Federal troops, and he in the country held by the Confederate troops; and that no newspapers that were published within the Federal lines were allowed to be sent into the Confederate lines; that there were no mail facilities between them, and the only communication was by a flag of truce; that a great civil war was raging between the Confederate government and the United States, and martial law existed in the State of Tennessee, and civil courts were only held by the will of military commanders. In his amended bill he alleged that when the attachment was issued, and the proceedings had, he was known to be one of the enemy of the party governing by arms the locality of the court, and that it was known that he could not have notice of the suit, could not appear at the court, and could have no communication with others at the place of the court, &c.

The bill further set forth that in September, 1864, the United States seized the property in question as forfeited, and in October of the same year filed an information against it; that Mrs. White had asked and obtained leave to intervene, and did intervene in December, 1864, prior to the date of the sale under the attachment, and it charged that by filing the said intervention in the District Court, Mrs. White had virtually abandoned her attachment suit in the Chancery Court, and that she relied upon having her debt made in the District Court, as provided by the act of Congress which authorized the seizure; and that these proceedings in the District Court gave the United States a prior lien upon the

Argument in support of the absentee's title.

property, the same as if it had been seized by the United States prior to the issue of the attachment bill in the Chancery Court, and that the Chancery Court had no authority to proceed with the sale of the said property, and have the sale confirmed after the said proceedings had been commenced in the District Court of the United States.

As respected the facts it seemed that the property was estimated variously from $6000 to $10,000; that the complainant had another house and lot close by of less value, and a farm; that he had been engaged in rebellion against the United States, and on that account had left Knoxville, the place of his residence; and though no record of the proceeding in the District Court for forfeiture was produced, it was yet admitted by the defendant that the mere facts of seizure, information, and intervention alleged, were correctly alleged, but it appeared also that Ramsey produced to the District Court a pardon from the President for his complicity in the rebellion, and that the proceedings being thus ended, the purchaser under the attachment obtained possession of the property under a writ of possession issued from the Chancery Court of the State.

The court below held that, "for want of a sufficient affidavit," the attachment issued at the suit of White was insufficient; that the Chancery Court of the State acquired no jurisdiction; and that all the proceedings therein "were null and void," and that as they had no other effect than to throw a "cloud" upon Ramsey's title, the removal of it the court regarded as ground for jurisdiction and relief, and granted the relief prayed for. Ludlow accordingly brought the case here.

Messrs. Lander and Moore, in support of the decree:

The case is one of such extreme hardship that the court will scan with eagle eyes the regularity of the proceedings by which the title set up is sought to be maintained. A valuable lot in Knoxville, worth more than thirty times the amount of the debt due to White, was levied on when there were other pieces of property not a stone's throw from it far

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less valuable; yet abundantly sufficient to pay the debt, notoriously known to be the property of the appellee. Yet this valuable piece of property was levied on and sacrificed. Now we say:

1. The affidavit upon which the attachment was obtained, does not meet, in form or in substance, the requirements of the law as expounded in numerous cases.* The language of McKinney, J., in one of them, *Thompson* v. *Carper*,† has been often cited, and seems conclusive of the case.

2. Ramsey obtained his pardon from the President of the United States, and whatever may have been his sympathies with the rebellion, he has a legal right to allege the fact of the existence at the time of a public war, and that being within the lines of the rebel authorities, he had no possible opportunity to defend the suit against him, nor to obtain any information of the existence of such a proceeding.

This court has recognized the war of the rebellion to have been a public war, and the fact that Ramsey before the Federal army took possession of the country around Knoxville had resided there and voluntarily left it and gone to another State, although it might have some weight in determining his status in a proceeding by the government against him, cannot avail Ludlow in a suit of this kind.

The law has been settled with respect to parties situated as these parties were during the war. In *Dean* v. *Nelson*,‡ the court say that "the defendants were within the Confederate lines, and that it was unlawful for them to cross those lines." Two of the defendants there had indeed been expelled from the Union lines, and could not return, so that an attempt may be made to distinguish that case from this, but as the report in that case states, "the other had never left the Confederate lines." As to him, *Dean* v. *Nelson* cannot be distinguished from this case; and even as to the other two, why had they been expelled? only in retaliation on

* Woodfolk *v.* Whitworth, 5 Caldwell, 561; Thompson *v.* Carper, 11 Humphrey, 542; Morris *v.* Davis, 4 Sneed, 453; Smith *v.* Foster, 3 Caldwell, 140; Haynes *v.* Gates, 2 Head, 598.

† 11 Humphrey, 542.

‡ 10 Wallace, 158.

rebels. They were as faulty as the one who remained all the time in the rebel lines. Yet of all three the court say in *Dean* v. *Nelson:*

"A notice directed to them, and published in a newspaper, was a mere idle form. They could not lawfully see nor obey it. As to them the proceedings were wholly void and inoperative."

3. Prior to the sale under the attachment Mrs. White intervened in the proceedings for confiscation, and by virtue of the provisions of the act of Congress had the privilege of asserting any right that she had. Now when the proceedings in the District Court were quashed, Ramsey, who had been pardoned, and all whose guilt had been wiped away, became possessed of his property. The State court had no power to vacate the order thus restoring his estate to him, and in giving it to Ludlow in virtue of the sale under the attachment, it acted in contempt of the Federal judiciary.

Messrs. Maynard and Nelson, contra, for the appellant.

Mr. Justice BRADLEY delivered the opinion of the court.

As the bill in this case is a collateral proceeding to set aside the sale, mere errors and irregularities in the original proceeding will not suffice. It must be shown that the court had no jurisdiction. We had occasion, recently, in the case of *Cooper* v. *Reynolds*,* which came from the same district as this case, and also arose upon an attachment, to examine this question, and it is unnecessary to repeat what was then said. The question is, did the court acquire jurisdiction of the case? It is not denied that it has general jurisdiction of attachments in such cases. The code expressly says, that any person may sue out an attachment in the Chancery Court, upon debts or demands of a purely legal nature, except causes of action founded on torts, whenever the amount in controversy is sufficient to give the court jurisdiction.† Fifty dollars gives the court jurisdiction, and the amount here is over $300. The judge below, in his decree, relies on the want of a suf-

* 10 Wallace, 308

† § 3461.

ficient affidavit. We have compared the affidavit with the requirements of the statute, in the light of the cases cited by the appellee's counsel, and we see in it no defect which should make the proceedings null and void. True, it does not say that the debt is a *just* claim; but it states the amount of the debt, and that it is on the defendant's note or bond, a copy of which is appended, showing that it was made under the defendant's seal, and contained a promise to pay to the complainant or order three hundred dollars, six months after date, for value received, with interest from date. This is a particularity beyond the requirement of the statute, and more than compensates for the omission of the statement that it was a just claim. The dictum of Judge McKinney, in 11th Humphrey, 545, so often quoted, that "it should be stated in the affidavit, and alleged in the attachment, that a suit has been commenced by the plaintiff against the defendant, the nature thereof, the tribunal in which it is depending, the amount of damages laid in the action, and that the cause of action stated is just," relates to an ancillary attachment in a suit brought for an unliquidated demand, and is suggested by him as a sufficient affidavit in such cases, in which it is impossible for the plaintiff to swear (as he can do in debt) to the precise amount due. In this case the complainant not only swears to the amount due, but exhibits a copy of the defendant's bond or note, under seal, in effect admitting the debt and promising to pay it. We cannot believe that the courts of Tennessee would hold such an affidavit defective even, much less so absolutely void as to vitiate all the subsequent proceedings.

The writ of attachment appears to be in due form and to have been regularly served on the property; so that the court became fully possessed of jurisdiction over the case. Our attention has not been called to any other defect in the proceedings that amounts to anything more than a mere irregularity, unless the points next to be considered should be regarded as doing so.

First. It is averred by Ramsey in his bill in the present suit that at the time when the attachment was sued out, and

when the publication was made in the newspaper at Knoxville notifying him to appear and defend the original suit, or that judgment would be taken *pro confesso* against him, he was in no situation to see or know of such publication, and he makes various allegations in confirmation of that statement, that he was in the country held by Confederate troops, &c.*

On these allegations the question arises, Why was the complainant in the country held by Confederate troops? Why could he not return to Knoxville? Why could he not have communication with that place? It was his place of residence. He says that he left Knoxville a short time before the Federal troops arrived. Why did he leave? Was he forced to leave, and was his return forbidden? Could he not have returned at any moment by submitting to the authority of the United States? Was not his absence a voluntary one? The order of publication was made at the January rules, 1864. President Lincoln's proclamation of amnesty was issued on the 8th of December previous, offering pardon and amnesty to all persons who would take the oath of allegiance. Then what obstacle existed to prevent the complainant's return? The causes alleged were certainly insufficient.

This case differs from that of *Dean* v. *Nelson*, decided at the present term. In that case Nelson and his wife were driven out of Memphis by a military order and were not permitted to return, and the proceedings to foreclose their property took place during their enforced absence. The other defendant, May, was only nominally interested, and had always been within the Confederate lines. But if, as in this case, a party voluntarily leaves his country or his residence for the purpose of engaging in hostilities against the former, he cannot be permitted to complain of legal proceedings regularly prosecuted against him as an absentee, on the ground of his inability to return or to hold communication with the place where the proceedings are conducted. That would be carrying the privilege of *contra non valentem*

* See *supra*, p. 584.—REP.

to an unreasonable extent. We think it cannot be set up in this case.

In the next place, it is alleged that the jurisdiction of the Chancery Court was displaced by proceedings to confiscate the property in the District Court of the United States, and a seizure made for that purpose, by order of the district attorney, on the 21st of September, 1864. No record or transcript of the alleged proceedings in the District Court was given in evidence in this suit; at least, none appears in the record before us. It is conceded that no confiscation took place. Ludlow, the respondent below, the appellant here, admits that proceedings were commenced by information filed October 10th, 1864; but states and shows that Cynthia S. White intervened to protect her interest and insist on her prior levy, made almost a year before the seizure in behalf of the United States; that Ramsey pleaded the President's pardon, and thus obtained a release of his property and an end of the confiscation proceedings; and that a writ of possession was afterwards awarded by the Chancery Court on the application of Ludlow, and possession was delivered to him accordingly in execution of the decree of said court. It is said that these proceedings were in contempt of the District Court. Though that be so, the matter is not before us, and we cannot adjudicate upon it. If the United States authorities had the right to seize the property, and take it out of the hands of the law, as a preliminary step to proceedings for confiscation, it would nevertheless seem to be the right of the Chancery Court to reassume possession when the confiscation proceedings failed and came to an end. And though the writ of possession awarded by that court may have been irregularly issued (which it is not necessary for us to decide), Ludlow, the purchaser of the chancery title, was in fact put in possession, and as between him and Ramsey, he has the better title. An ineffectual attempt at confiscation, supervening upon the chancery proceedings, cannot deprive those proceedings of legal validity.

DECREE REVERSED.