

## Syllabus.

petitioning creditors should have owing to them from the debtor they wish to pursue, debts provable under the act to the required amount. The English cases referred to in the argument, in our opinion, have no application here. They are founded upon the English statutes and the established practice under them. Our statute is different in its provisions and requires, as we think, a different practice.

This is conclusive of the case. The petition filed in the bankrupt proceedings distinctly averred that the debts due the petitioner exceeded the sum of \$250; and, if interest is added, the particular indebtedness specified amounts to more than that sum. The court found this allegation true. That finding is conclusive in a collateral action. We have so decided in *Michaels v. Post*,\* at the present term. Where the record shows jurisdiction, an adjudication of bankruptcy can only be assailed by a direct proceeding in a competent court. Evidence, therefore, to show that payments had been made which reduced the indebtedness below the required amount was inadmissible under any form of pleading in an action like this, but it was especially so in this case, because there is no averment in the pleadings contradicting the record. The sole objection is that upon the face of the record the error is apparent. A record cannot be impeached without previous notice by proper form of pleading.

JUDGMENT AFFIRMED.

## IN RE CHILES.

1. In the original decree in the case of *Texas v. White & Chiles* (7 Wallace, 700), the defendants were perpetually enjoined from setting up any claim or title to any of the bonds, or coupons attached to them, which were the subject-matter of the suit. The bill, answers, and proceedings in the case show that the purpose of the suit was to establish the title of the State to these bonds, and to free it from the embarrassment of the claim of defendants.

\* 21 Wallace, 398.

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2. All parties to the suit were, therefore, bound by the decree as to that title, and because Chiles was the owner, or now asserts himself to be the owner, through a transaction not set up in his answer, he is not the less concluded and bound to obey the above injunction.
3. Notwithstanding he now asserts a different title, or source of title, held by him when the suit was brought, from the one imputed to him in the suit and defended by him, he is in contempt of court in setting up and seeking to enforce his claim.
4. Punishments for contempt of court have two aspects, namely: 1. To vindicate the dignity of the court from disrespect shown to it or its orders. 2. To compel the performance of some order or decree of the court which it is in the power of the party to perform and which he refuses to obey.
5. In the present case there is no part of the original decree which Chiles can perform which remains unexecuted, and no additional order or decree can be made for him to perform in this proceeding for contempt.
6. The court, therefore, sentences him to a fine of \$250 and costs for his contempt in setting up a claim of title to seventy-six of the bonds mentioned in the decree.

ON motion by the State of Texas for a rule on John Chiles to show cause why he should not be dealt with as guilty of a contempt of this court in disobeying one of its decrees, and why he should not by proper instrument convey to the said State all his right, title, and interest to seventy-six certain bonds of the United States now in the possession of Droege & Co., of London.

The case was thus:

On the 12th of January, 1863—the State of Texas being then in rebellion against the United States—certain persons calling themselves its Military Board, and who were possessed, under a statute of the then so-called State, of actual power within its confines—entered into a contract with a certain G. W. White and J. Chiles, by which, in consideration of military stores to be furnished to the State, the State was to sell and transfer to them certain bonds of the United States which, long before the rebellion, the United States had given to the State of Texas as an indemnity for the surrender of certain territory claimed by it; and which bonds were thus known as the Texas Indemnity Bonds.

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Two lots of bonds were mentioned in this contract. One of them was thus:

"2d. Seventy-six bonds with coupons attached, principal and interest amounting to \$87,400, said seventy-six bonds and coupons supposed to be upon deposit with Droege & Co., England."

The rebellion being suppressed, and the government of the State of Texas having passed again into the hands of persons loyal to the United States, the State filed a bill in this court against *White & Chiles*, one J. A. Hardenberg and several other persons, to establish its title to and to get control and possession of these bonds, or of their proceeds. The case is reported in 7th Wallace, page 700.

The bill recited the circumstances under which the United States issued and the State of Texas received the bonds known as the Texas indemnity bonds, and then alleged that these bonds fell into the hands of a combination of conspirators, who, assuming to be the lawful government of the State of Texas, sold them to *White & Chiles*, delivering one hundred and thirty-five of them, and selling the seventy-six above mentioned, which were then deposited with Droege & Co., in England. It alleged that the contract of sale by the military board of Texas, and the statute under which that board acted were void, because the object and purpose of both were to aid the rebellion in its efforts to overthrow the government of the United States; and it alleged that the bonds were not legally transferred for want of the indorsement of the governor of Texas, which, by a statute of that State, was made necessary to any legal transfer of them.

There was thus an assertion of title and ownership of these bonds both in law and in equity in the plaintiff, the State of Texas, with a recital of the origin and state of that title.

There was then an allegation of three distinct grounds on which the claim of the defendants was charged to be invalid: 1. That their possession was obtained through an unlawful band of conspirators who, taking possession of these bonds and of the political power of the State, had delivered the

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bonds to White & Chiles, without any authority to do so. 2. That such bonds could not be lawfully delivered or transferred so as to carry the title of the State to them to any person without the indorsement of the governor, which none of these bonds had. 3. That the contract under which White & Chiles received the bonds delivered to them, and claimed title to those not delivered, was void, because made with the intent to aid the rebellion.

A copy of this contract was set out as Exhibit "A" of the bill, and mentioned, as already stated, specifically the seventy-six bonds.

White & Chiles filed separate answers to this bill, and took issue either as matter of law or of fact on all these grounds of complaint. They asserted the justice and legality of their title to the bonds and to all of them; and of course denied the right of the State to recover of them or of their vendees either these bonds or their proceeds in the treasury or their value.

On the 12th of April, 1869, a decree was entered in the case. It ordered—

"That the contract bearing date the 12th January, 1865, purporting to have been executed between the military board of the State of Texas and White & Chiles—which said contract is set forth as Exhibit A to the complainant's bill of complaint—is null and void and of no effect, and that the said White & Chiles, their agents and attorneys, and all others claiming to act in their behalf, be perpetually enjoined from asserting any right or claim under the same, and that the complainant is entitled to recover and receive the bonds and coupons mentioned in said contract as having been transferred or sold to the said White & Chiles, which at the several times of service of process in this suit were in possession or under the control of the defendants, respectively, and any proceeds thereof which have come into such possession or control with notice of the equity of the complainant.

"That the said G. W. White, John Chiles, J. A. Hardenberg, &c., and each of them, be hereby perpetually enjoined from setting up any claim or title to any of the bonds and coupons attached which are described in the first article of said contract

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filed as Exhibit A to the bill of complaint, and that the above complainant is entitled to restitution of such of the bonds and coupons and proceeds as have come into the possession or control of the said defendants, respectively, and as aforesaid."

By the terms of the decree each party had leave to move for further orders.

In this state of things, Chiles, on or about the date of it, addressed and served on Droege & Co. this notice:

"July 17th, 1874.

"MESSRS. DROEGE & CO.,

"Manchester, England.

"You are again hereby notified that I am the owner, by contract with the State of Texas, of seventy-six Texan indemnity bonds of one thousand dollars each, and coupons attached, amounting in all to \$87,400; and also of the balance of one hundred and fifty-one of said bonds, with coupons attached, placed in your custody by John Milton Swisher, of Texas. And you are hereby notified not to part with the possession of said bonds and coupons or any portion of them without due authority from me.

"My solicitors will wait upon you with the necessary process to bring the matter before a judicial tribunal as soon as the proper preparations can be perfected.

"JOHN CHILES."

The State of Texas now, accordingly, made the motion on which the present rule to show cause was granted.

The petition on which it was granted charged that Chiles had continually and repeatedly asserted a claim to seventy-six of the bonds mentioned in the said decree, thereby seriously impeding a settlement and compromise by the State of Texas with persons who have possession of such bonds in England, and especially charging him with writing and serving the preceding notice to Droege & Co., as also a certain other notice to other persons in England, having some sort of relation to the proceeds of some of these Texas indemnity bonds; this last notice, however, not being much pressed by the counsel of Texas as a feature in the case, and the reliance being on the notice to Droege & Co. as to the seventy-

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six bonds, which were distinctly referred to in the bill in the original suit.

In answer to the rule to show cause, and in answer to interrogatories propounded to him by the complainant's counsel, Chiles admitted that he signed the abovementioned notices in the city of New York and caused them to be served on the parties, and that he had claimed, ever since the decree in the original case, and did now claim, as owner, the seventy-six abovementioned bonds. But he denied that he was guilty of any contempt or violation of the injunction of this court, on two grounds:

1st. That the decree of the court only enjoined him from asserting a claim under the contract between White & Chiles and the military board of Texas, which was the Exhibit "A" mentioned in the decree, whereas the title which he now asserted to all the bonds, including the seventy-six, was, as he alleged, under a wholly different contract made by himself alone, on the 4th of March, 1865, with the said military board (which he deemed was the proper authority of the State of Texas), *after* the one which was declared void by the decree of this court, but before the suit was brought. And that in that last contract White had no interest whatever. He added that being in no wise forbidden, or not at full liberty to assert a claim as owner to the said bonds *thereunder*, he proposed to have the question of his right to the said bonds *thereunder* adjudicated by the proper court in England.

2d. That there could be no violation of the injunction until he asserted his claim by some kind of judicial proceeding, which he had not yet attempted to do.

The question therefore was whether, on this petition and answer, he could be properly punished for a contempt.

*Mr. Albert Pike, against the rule:*

I. The object of the original suit was to annul the contract made with *White & Chiles*. It had no other object. The injunction was but a mode of giving effect to the decree annulling it. And no other contract being mentioned in

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the suit or decree, the injunction cannot lawfully have the effect to forbid the assertion of right under any other. It can annul no contract that was not asked to be annulled, and properly impeached; certainly not by implication, one of the existence of which it was not even informed.

Although the second contract was *made* long before the decree, it had taken no effect at all as a *transfer* of the seventy-six bonds, until *by* the decree the first contract was annulled. Until then Chiles had no title under it, to these bonds, which he could set up. He could not plead a title before it existed.

Injunctions are granted to suppress vexatious *suits*; to remove improper *impediments* and *defences at law*; to restrain alienations of property; to prevent transfers; to prevent irreparable mischiefs and trespasses; to suppress publications; to compel delivery up of possession and to quiet possession; to restrain from carrying on a *suit*, or entering judgment in a foreign country, and for a number of other things; but we find none to prevent a man from saying, orally or in writing, by way of notice or otherwise, that he has a claim or right to property or to evidences of debt of any kind. A written notice to such effect is no more than an oral one. If one "sets up" a claim, or "asserts" a claim, so does the other. Chiles has had the right, ever since the decree was rendered, to stand at the street-corners and proclaim, if he saw fit, or to publish and advertise in the newspapers here and in London, and to tell, inform, advise, and notify to Droege & Co. that he believed and knew that he had a perfect right to and was the proprietor of the bonds in England or those which he and White had received under the first contract, notwithstanding the decree of this court. It is no contempt of the court to think and to say that its decision in any case is wrong. The court itself has declared that of its own decisions, and reversed them; and dissenting opinions are continual. In the very case of *Texas v. White & Chiles*—in which the decree which it is now said has been contemned, was given—there were dissenting opinions by Grier, Swayne, and Miller, JJ.; the opinion of each of them going to the

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foundation of the case,—the right, to wit, of the State of Texas to sue at all.

Besides, these bonds are in England, under a sovereignty distinct from any which this court has anything to do with. This court had no power to compel Droege & Co., or any other man in England, to come into these precincts, or to pass upon money held by them.

In the inquiry whether Chiles has violated the law, the decree is to be construed in his favor, and against the plaintiff: 1st, because it is penal in its nature; and 2d, because it is the decree of the plaintiff made in response to his prayer, and upon the case made by him in his bill.

The decree in this case, indeed, enjoined all the defendants from *setting up any claim* to any of the bonds described in the first article of the contract. But a court will always construe a decree with reference to the issues it was meant to decide. However broad and emphatic the enjoining words may be, the object of the bill in this case was to avoid and set aside the particular contract attacked by the bill; and the general words must be restricted within these limits.\*

II. Chiles has not, according to the legal meaning of the phrase, or according to its meaning as used in the decree, *set up or asserted* a claim to the seventy-six bonds in question, he not having instituted or commenced any suit, action, or proceeding whatever, for the enforcement of any right in himself to them, or of any interest in them.

*Messrs. R. T. Merrick and T. J. Durant, contra:*

The manifest conclusions to be drawn from a perusal of the letter of Chiles to Droege & Co. are, so far as John Chiles is concerned:

*First.* To ignore absolutely all the proceedings in the suit of *Texas v. White & Chiles*, reported in 7th Wallace, and to treat the elements of the thing adjudged therein, so far as the seventy-six bonds are concerned, as absolutely void.

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\* *Graham v. Railroad Company*, 3 Wallace, 710.

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*Second.* In violation of the decree and its accompanying injunction, to again claim the bonds as owner.

*Third.* To prevent, by the active interposition of Chiles, the State of Texas from reaping the fruits of the decree in the said case of *Texas v. White & Chiles*.

Any statement which can be made of the case now before the court shows that this is so, and that Mr. Chiles is in contempt. We do not insist upon the grounds for this assertion. The court will enforce them if it deems it necessary.

We now go further; and in view of what Chiles has done by his notices, in view of the embarrassments which by them he has caused and is causing, we ask that he be compelled to execute, under direction of a master to be appointed in the case, a proper instrument transferring to the State of Texas *in form*, the title to the seventy-six bonds in the hands of Droege & Co. And in view of his plain contempt of the court already committed, we ask that he be imprisoned until he execute such a transfer.

Mr. Justice MILLER delivered the opinion of the court.

The object of the bill filed by the State of Texas in the case of *Texas v. White & Chiles*, and reported in 7th Wallace, was to establish the *title of the State of Texas* to the bonds there claimed, and her bill of complaint made parties, so far as she knew and could bring them before the court, all persons who denied or contested that title. The bill was framed as carefully and as fully as it well could be for the purpose of establishing that title finally and conclusively. If out of abundant caution the bill sets out all the false and pretended claims of the defendants, and the grounds on which they were supposed to be false, that were known to complainant, is the final decree in her favor to be of no avail because one or more of the defendants had another and a different ground of defence which he did not set up in his answer, nor in any manner make known to the court?

Mr. White was called on by this bill to defend his *title*, his *whole title*, to these bonds, or to any part of them, or any in-

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terest in them. The prayer and object of the bill was to decide and determine the title, and to give all such relief as equity could give if the title was found in the complainant.

It would be to trifle with the court to make a proceeding in equity, designed to give full and final relief, and to administer complete justice, to depend upon the skill and jugglery by which a defendant might conceal some part of his defence to that suit until it was decided against him, and then set it up as an excuse for disobeying the final decree of the court, or hold it out as the basis of another suit for the title or possession of the same bonds. And whatever difference of opinion may be found in the authorities, on the nice distinctions involved in the question of what is concluded in suits at law, and without even the necessity of going as far as this court has gone in actions at law in holding that all that *might* have been set up as a defence in the action must be concluded by the judgment, we are of opinion that in such a case as this, in a suit in equity, when the obvious purpose of the bill is to establish and adjudicate the entire rights and title of the parties before the court to the bonds and their proceeds in all the forms in which they can be identified, the decree must be final and conclusive on all the rights of all the parties actually before the court.

As to the meaning of the decree on this subject it is too plain for argument.

The first paragraph or order declares the contract with White & Chiles void, and enjoins them and the other defendant from asserting any right or claim under the same; and it establishes plaintiff's right to said bonds and to their proceeds.

The second paragraph or order perpetually enjoins the defendants, including White & Chiles, from setting up *any claim* or title to any of the bonds and attached coupons which are described in that contract, but does not limit the prohibition to a title under said contract. There can be no use for these several orders of injunction except to make it certain that defendants are to assert no claim to these bonds, either under that contract or under any other claim or title.

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In regard to the second ground of defence no authorities are cited by either side. The language of the enjoining order certainly is not limited to a prohibition of a suit in court. Nor are we satisfied that the purpose and object of the injunction would be obtained by such a limitation. The purpose of the suit was, as we have said, to establish the rights of plaintiff as owners of these bonds and to prevent further interference or obstruction in the assertion of that right. As to all the bonds in the possession of the parties, or when they or their proceeds were within the control of the court, this purpose was attained by other orders and decrees.

But as to these bonds which were in England, all that the court could do was to prevent by injunction any interference of the defendants with the efforts of complainant to recover them, and that was the meaning of the enjoining order of the court. Is it obeyed or its purpose attained while one of the defendants asserts openly and continually, "I am the owner of these bonds notwithstanding the decree of the court; I shall in another jurisdiction maintain my right to them by all legal means?" That such a course would seriously embarrass the complainant in securing her right as established by this decree there can be no doubt. Would it be permitted when in a suit to quiet title to real estate defendant was enjoined from any further disturbance of that title or assertion of his own, that he could still continue to slander plaintiff's title, impair its validity, and prevent its sale, because he stopped short of instituting a suit for the land? The very ground of bringing a suit to quiet title is that the disturber, while asserting a claim which is a cloud on plaintiff's title, refuses to carry it to the test of a trial in court, and because he refuses to do this a court of equity stops his mouth. This also is a bill to quiet title, and the defendant is forbid to set up or assert a title in conflict with complainant's. This prohibition is not obeyed where the defendant continues the annoyance and the injury in any form short of bringing a suit for the bonds.

Without determining how far a mere loose verbal asser-

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tion of a right to these bonds could violate the injunction, we are of opinion that the deliberate service upon those who had them in possession, of a written notice of his claim of ownership, with a reference to further judicial proceeding in support of it, is a violation of the injunction of the court in this case, and that the defendant, Chiles, is guilty of a contempt in that regard.

Section 725 of the Revised Statutes declares that the courts of the United States shall have power to punish by fine and imprisonment for contempts of their authority. And among the cases specially enumerated are "disobedience or resistance by any officer of the court, or by any party, juror, witness, or other person, to any lawful writ, process, order, rule, decree, or command of the said courts." Such has always been the power of the courts both of common law and equity. The exercise of this power has a two-fold aspect, namely: first, the proper punishment of the guilty party for his disrespect to the court or its order, and the second, to compel his performance of some act or duty required of him by the court, which he refuses to perform.\*

In the former case, the court must judge for itself the nature and extent of the punishment, with reference to the gravity of the offence. In the latter case, the party refusing to obey should be fined and imprisoned until he performs the act required of him, or shows that it is not in his power to do it.

We are asked by counsel for the State of Texas to act upon this latter principle in the present case. But it is not pointed out to us very clearly what act it is in the power of defendant to perform commanded by the decree and which he refuses to do. The bonds are not in his possession or under his control. He cannot, therefore, deliver them up as the decree orders. There is no decree that he shall pay their value. The only order which he is shown to have violated is the one we have considered, enjoining him from setting up a claim to them.

\* *Stimpson v. Putnam*, 41 Vermont, 238.

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The petition for the present rule on Chiles asks that he may be ordered by a proper instrument in writing to convey and transfer to the State of Texas all rights, titles, and interest which he appears or pretends to have in said bonds, and counsel in oral argument says he should be imprisoned for contempt until he complies with this order.

But the obvious answer to this is that no such order or decree has been made, and defendant can be guilty of no contempt in not doing this until he has been ordered to do it, and he is aware of it. To make an order now, and then punish for contempt or disregard of it before it was made, is *ex post facto* legislation and judicial enforcement at the same moment.

It is true that the original decree contains a provision for further directions in the enforcement of it, and it may be that such an order as is asked for now would be made on proper application and proper notice to the parties concerned, but such a proceeding can constitute no part of process for contempt in disregarding an existing order of the court. The granting or refusal of such an order is governed by very different considerations, and is to be brought to the attention of the court by very different proceedings than such as belong to the one now before us.

We are left, then, to the consideration of what punishment we shall impose upon Mr. Chiles for the violation of this court's injunction in a suit to which he was a party, where he was fully heard and his rights conclusively decided.

Without further comments, we think it our duty to order that he pay to the United States a fine of two hundred and fifty dollars and the costs of this proceeding, and that he stand committed to the custody of the marshal of this court until said fine and costs are paid.

Justices FIELD and HUNT dissented.