

not be had as for a contempt for the non-payment of money ordered by the court to be paid when the payment can be enforced by execution, and imprisonment for non-payment of costs is abolished. The power of the courts of the United States to punish for contempt and imprison for non-payment of money judgments is circumscribed and controlled by the laws of the state; and where an order made in the progress of the cause is of the character in substance of a judgment or decree for the payment of money, it cannot be enforced upon the theory that disobedience is a contempt. Rev. St. §§ 725, 990; *In re Atlantic Mutual Ins. Co.* 17 N. B. R. 368; *The Blanche Page*, 16 Blatchf. 1; *Catherwood v. Gapete*, 2 Curt. 94; *U. S. v. Tetlow*, 2 Low. 159; *Low v. Durfee* 5 FED. REP. 256.

The motion is denied.

ANDREWS v. COLE.

(Circuit Court, N. D. New York. May 30, 1884.)

1. ORDER PRO CONFESSO—DOES NOT ENTITLE COMPLAINANT TO FINAL DECREE AS OF COURSE.

A complainant is not entitled as of course to a final decree when he has obtained an order *pro confesso*, he not being permitted to take at his discretion such a decree as he may be willing to abide by.

2. FINAL HEARING—RIGHT TO DOCKET FEE—REV. ST. § 824

The consideration of a bill is a hearing, and is final when it results in the final disposition of a cause, and entitles a party to a docket fee under Rev. St. § 824.

In Equity.

Thos. D. Richardson, for complainant.

R. A. Stanton, for defendant.

WALLACE, J. The defendant objects to the taxation by the clerk of a docket fee of \$20 as part of the costs of the complainant upon a final decree herein. The defendant did not answer or demur to the bill, and complainant took an order for a decree *pro confesso*, and subsequently obtained a final decree. As the cause has been finally determined, and as its determination involved a hearing by the court, there has been a final hearing within the meaning of section 824, Rev. St., which authorizes a docket fee of \$20 to be taxed. There has been much discussion of the meaning of the term "final hearing," as used in this section, and a diversity of opinion is found in the decisions. Several cases decide that any order or determination which results in a final disposition of the cause, including a dismissal of the bill on the motion of the complainant, or the dismissal of an appeal by the appellee for irregularity on the part of the appellant in bringing it to a hearing, is a final hearing. *Hayford v. Griffiths*, 3 Blatchf. 79; *The Alert*, 15 FED. REP. 620; *Goodyear v. Sawyer*, 17 FED. REP. 2. Other

cases hold that there is a final hearing only when some question of law or fact has been submitted to the court requiring not merely formal action but consideration. *Coy v. Perkins*, 13 FED. REP. 112; *Yale Lock Co. v. Colvin*, 14 FED. REP. 269.

The defendant relies upon the authority of these latter decisions, but they are not decisive here, because a complainant is not entitled, as of course to a final decree when he has obtained an order *pro confesso*. The matter of the bill is still to be decreed by the court, and then only when it is proper to be decreed. The bill is to be examined to see if the facts alleged entitle the complainant to relief. According to the earlier practice of the English chancery a bill would not be taken *pro confesso* without putting the complainant to prove its material allegations. *Johnson v. Desmoneere*, 1 Vern. 223. The later practice is to set down the bill for hearing, upon an order previously obtained that the bill be taken *pro confesso*, whereupon the record is produced, and the court hears the pleadings and pronounces the decree. The complainant is not permitted to take at his discretion such a decree as he may be willing to abide by. *Geary v. Sheridan*, 8 Ves. 192. This is the practice which obtains under the equity rules of this court. The consideration of the bill is a hearing, and is final when it results in the final disposition of the cause.

The taxation was correct.

HARVEY and another v. COMMONWEALTH OF VIRGINIA.

(Circuit Court, E. D. Virginia. May 12, 1884.)

1. CONSTITUTIONAL LAW—STATE STATUTE MAKING COUPONS ON BONDS RECEIVABLE FOR TAXES—SUBSEQUENT STATUTE.

Where a state contracts, in terms, that the coupons attached to its bonds shall be receivable in payment of "all debts, dues, and demands due the state," the contract embraces license taxes; and if, in a subsequent law, it prescribes such conditions precedent to the issuing of licenses as to enforce the payment of license taxes in money, and to preclude their payment in coupons, she violates that clause of the tenth section of the first article of the constitution of the United States which forbids any state from passing any law impairing the obligation of contracts.

2. SAME—RIGHT OF CITIZEN TO SUE STATE—JURISDICTION OF CIRCUIT COURT.

Quære, whether the first clause of the second section of the third article of the United States constitution, which extends the judicial power of the United States to *all* cases in law and equity arising under the constitution and laws of the United States, as this clause is put in force by the first section of the judiciary act of congress of March 3, 1875, giving jurisdiction of all such cases to the circuit courts of the United States, authorizes a citizen to sue his own state, in such a case, in a federal court.

3. SAME—CONFORMITY TO PRACTICE IN STATE COURT—REPEAL BY STATE OF SPECIAL ACT AUTHORIZING SUIT.

Even though (under section 914 of the Revised Statutes, requiring proceedings at law in courts of the United States to be conformed to proceedings in similar cases in state courts) an anomalous proceeding at law may be brought