

force, cannot be considered to have reference to jurisdictional facts, but to the bankruptcy discharge. In the sixth and seventh divisions of the third paragraph of the defendant's special defense, the facts in regard to the jurisdiction of the California court over the person of the defendant Davis, the service by publication, the California statute, and his non-appearance in the suit are set forth at length. These facts are pleaded as a part of the defense of the discharge in bankruptcy, and, as the Code requires that each separate defense should be separately stated, it cannot be supposed that they constitute a double defense. If they are material to the defense in bankruptcy,—and from the fact that they are pleaded it is to be presumed that the pleader deemed them material,—they present and claim, and set up by answer, the invalidity of the judgment as a factor in the defense. This is prohibited by the injunction order, which enjoins the defendant from in any manner or form maintaining that the judgment was not made by a court having competent jurisdiction thereof. In the particulars which have been named, I am of opinion that the defendant's attorney has not complied with the injunction order, and that the violation will be a continuing one until the answer is amended. The complainant suggests only a fine equivalent to the amount of expenses which he has incurred in the preparation of the voluminous motion papers. The question of the amount of the fine will be submitted to the court upon affidavits, and without argument, within one week from the filing of this opinion. The order will be thereafter settled upon hearing.

Ex parte SKILES.

(Circuit Court, D. Minnesota, Third Division. June 3, 1892.)

HABEAS CORPUS—JURISDICTION OF FEDERAL COURTS—EXTRADITED PRISONER CONVICTED OF DIFFERENT OFFENSE.

The federal courts have no jurisdiction to review by *habeas corpus* a judgment of conviction in a state court having jurisdiction of the person and the offense, although the prisoner had been extradited from another state to answer an indictment, and was convicted of an offense other than that charged therein. His remedy is by appeal or other appropriate proceedings in the state courts.

At Law. Application of Robert Iron Skiles for writ of *habeas corpus*. Denied.

Fayette Marsh and J. C. Nethaway, for petitioner.

Geo. H. Sullivan, Co. Atty., for the State.

NELSON, District Judge. The prisoner, Skiles, was rendered up to the state of Minnesota on demand of the executive from the state of Texas by proceedings commenced under the constitution and laws of the United States in regard to the delivery of fugitives from justice. He was delivered up and removed to the state of Minnesota, and confined in the jail, February 12, 1892, upon an allegation that an indict-

ment stood against him in the county of Washington, state of Minnesota, found by the grand jury, May 6, A. D. 1890, charging the crime of obtaining by false pretenses a promissory note and chattel mortgage from one John Alfred Roney. On May 5, A. D. 1892, while awaiting trial, an indictment was found against him for the same offense of defrauding Roney, evidently to correct a supposed defect in the first indictment. The grand jury also found an indictment against him for another and different crime from that on which he was extradited. On an arraignment under this indictment the prisoner refused to plead, and on plea of not guilty being entered he was tried May 16, 1892, and convicted, and a motion was made, and is now pending, in the state court in arrest of and to set aside this judgment. The petition for a writ of *habeas corpus* to secure the prisoner's release alleges that he is not detained by reason of any final judgment or decree of any competent tribunal of civil or criminal jurisdiction, or by virtue of an execution issued upon such judgment or decree. It is urged that the district court of Washington county had no jurisdiction, and cannot lawfully put the prisoner upon trial for an offense for which he was not extradited. Upon the face of the petition and answer of the sheriff of Washington county to the "order to show cause why a writ of *habeas corpus* should not issue," it appears clearly that the petitioner is in custody and lawfully held by virtue of criminal proceedings duly instituted under the laws of the state of Minnesota; but while this is conceded, as I understand counsel, yet it is insisted that having been put upon his trial on an indictment charging another and different offense from that for which he was extradited, and judgment of conviction being entered, this court should declare such judgment illegal and void, for the reason that the state of Minnesota had no right to try the petitioner extradited from another state upon a charge other than that contained in the extradition papers. If this position of counsel is sound, the federal courts have supervisory jurisdiction over judgments of the state criminal courts, although such courts had jurisdiction of the person and of the offense, and thus can accomplish by the writ of *habeas corpus* all that otherwise could only be obtained on review by writ of error or appeal to the supreme court of the state, which undoubtedly has plenary jurisdiction to correct errors of the trial court. The circuit courts of the United States, in my opinion, do not possess such supervisory jurisdiction. It would be an affectation of learning, and serve no useful purpose, to do more than cite counsel to the case of *Ex parte Ulrich*, 43 Fed. Rep. 661, for a full and exhaustive exposition of the law involved in this case. Application for a writ of *habeas corpus* is denied.

*(Ex parte YOUNG.**(Circuit Court, E. D. Tennessee, S. D. March 10, 1892.)***1. CONTEMPT—HABEAS CORPUS—REMOVAL OF CHILD—JURISDICTION OF STATE COURT.**

A father, directed by writ of *habeas corpus* to produce his child before a state judge, caused the child to be removed without the limits of the state, and kept there in the custody of an agent, subject to the control of the father, for the purpose of defeating the jurisdiction of the state judge. *Held*, that the child was constructively in the possession of the father, and that the fact of its being without the state did not affect the jurisdiction of the state judge to fine and imprison the father for contempt in disobeying the writ of *habeas corpus*.

2. SAME—DUE PROCESS OF LAW.

In such case, the fine and imprisonment were not "without due process of law," and the circuit court of the United States has no jurisdiction of a petition by the father for a writ of *habeas corpus* on that ground, whether the action of the state court in imposing the punishment was or was not erroneous.

At Law. Petition by J. W. Young for writ of *habeas corpus*. Dismissed.

Lewis Shepherd and *W. H. Bogle*, for petitioner.

Clift & Smith, for respondent.

KEY, District Judge. The plaintiff files his petition for a writ of *habeas corpus*, alleging that he is unlawfully imprisoned. It appears that he and his wife have separated; that they have a child, who is three years of age; and that proceedings are pending in the chancery court of the state, by which Mrs. Young seeks a divorce from her husband, and the custody of her child. February 26, 1892, the wife sued out a writ of *habeas corpus* against her husband and others from the judge of a circuit court of the state, alleging that her husband had the custody of the child; that in the divorce proceeding her husband had been attached, upon her petition, for contempt because of his disobedience to the injunction of the chancellor, and the chancellor heard the charge of contempt on the 20th day of February, 1892; that on the Friday before this hearing Young had said that he did not know how the court would decide the matter, and that he intended to run the child away, so that they could not get hold of her, provided the court should decide against him; and that in execution of his threat, and while the chancellor was hearing the matter of contempt, Young had the child removed from this state, and beyond the chancellor's jurisdiction. Upon this petition the circuit judge issued a writ requiring Young to appear before him the afternoon following, and to bring the child with him. At the time the writ was returnable the plaintiff in this case, Young, made what may be styled a "partial return," but stated that he had not been allowed sufficient time to make a full and complete return. The judge allowed two days more. At the end of the two days the following order was made:

"STATE OF TENNESSEE, HAMILTON COUNTY.

"*In the Matter of the Petition of May Young vs. J. W. Young et als. Habeas Corpus Proceedings in the Circuit Court of Hamilton Co., Tenn.*

"In this cause the defendant, Young, having failed to comply with the order of the court to produce in court the body of Dorsey Young, as ordered in