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*Betts v. Lewis and Wife.*

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When fraud is alleged as a ground to set aside a title, the statute does not begin to run until the fraud is discovered; and this is the ground on which the complainant asks relief. But, in such a case, the bill must be specific in stating the facts and circumstances which constitute the fraud; and also as to the time it was discovered. This is necessary to enable the defendants to meet the fraud, and the alleged time of its discovery. In these respects the bill is defective, and the evidence is still more so.

The complainant's counsel seem to suppose, that as the defendants in their answer admit the property, at least in part, was originally acquired under a sale of Manton's administrator, they are bound to show the proceedings were not only conformable to law, but that they must go further, and prove the debts for which it was sold were due and owing by the deceased. So far from this being the legal rule, under the circumstances of this case, the presumptions are in favor of the present occupants, and the complainants must show the administrator's sale was illegal and void. After an adverse possession of more than eighty years, when the facts have passed from the memory, and, as in this case, the papers are not to be found in the probate court, no court can require of the defendants proof in regard to such sale. The burden of proof falls upon him who attempts to disturb a possession of ages, transmitted and enjoyed under the forms of law.

Whether we consider the great lapse of time, and the change in the value of the property, or the statutes of limitation, the right of the complainant is barred. The decree of the Circuit Court is affirmed.

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BURR H. BETTS, APPELLANT, *v.* JOHN H. LEWIS, AND MARY M. F. LEWIS, HIS WIFE.

According to the practice prescribed for the Circuit Courts, by this court, in equity causes, a bill cannot be dismissed, on motion of the respondents, for want of equity after answer and before the hearing.

THIS was an appeal from the District Court of the United States for the northern district of Alabama.

It was a bill filed by Betts against Lewis and wife, under the same circumstances which gave rise to the case of *Lewis v. Darling*, reported in 16 Howard, 1. It will be seen by a reference to that case, page 6, that Burr H. Betts was one of the legatees in the will of Samuel Betts.

It is not material in the present report to state the nature of the case.

It was argued by *Mr. Butler* for the appellant, and by *Mr. Johnson* for the appellees.

Mr. Justice CURTIS delivered the opinion of the court.

This is an appeal from the decree of the District Court of the United States for the northern district of Alabama, having the powers of a circuit court. The appellant filed his bill in that court to charge a legacy on property alleged to have come to the hands of the respondents, and to be chargeable with its payment. After answers had been filed, and while exceptions to one of the answers were pending, the respondents moved to dismiss the bill for want of equity, and the court ordered it to be dismissed. This was irregular, and the decree must be reversed. It is understood to be in conformity with the practice of the State courts of Alabama to entertain such a motion at any stage of the proceedings. But the equity practice of the courts of the United States is governed by the rules prescribed by this court, under the authority conferred upon it by the act of Congress, (*McDonald v. Smalley*, 1 Pet., 620,) and is the same in all the States. And this practice does not sanction the dismissal of the bill on a motion made while the parties are perfecting the pleadings. The question whether the bill contains any equity, may be raised by a demurrer. If the defendant answer, this question cannot be raised until the hearing. Non constat that a defect may not be removed before the hearing.

The case must be remanded to the Circuit Court, and if any defects exist in the bill capable of being cured by amendments, as no replication has been filed, it is within the rules of ordinary practice to allow them to be made.

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THE UNITED STATES, PLAINTIFF IN ERROR, *v.* CHARLES LE BARON.

A deed speaks from the time of its delivery, not from its date.

The bond of a deputy postmaster takes effect and speaks from the time that it reaches the Postmaster General and is accepted by him, and not from the day of its date, or from the time when it is deposited in the post office to be sent forward.

The difference explained between a bond of this description and a bond given by a collector of the customs.