

Case No. 3,757.

{1 Baldw. 132.}¹

DELAUNEY v. HERMANN.

Circuit Court, E. D. Pennsylvania.

April Term, 1830.

EQUITY PRACTICE—DISMISSAL OF BILL—DELAY IN PROSECUTION.

The court will not dismiss a bill for want of proceeding in the cause for three terms, without giving one term's notice of the application for dismissal.

In this case a bill was filed to October 1825; an answer put in March 1826; exceptions taken and a new answer filed June 1826. On the 11th of October 1826, the plaintiff took out a commission to Bordeaux, which has never been executed or returned. The plaintiff has filed no replication, or taken any measures to procure testimony, or to bring the cause to a hearing.

On the first day of this term, Mr. Rawle moved to dismiss the bill with costs.

BALDWIN, Circuit Justice. There has undoubtedly been very great delay on the part of the complainant, which is not satisfactorily accounted for; but the respondent has had it in his power, under the thirteenth and seventeenth rules of the supreme court, to compel a reply and a hearing of the cause, which has not been done. He now asks for a dismissal, according to a rule of the English court of chancery, authorizing it, where the complainant has omitted for three terms to proceed in the cause. 2 Madd. Ch. 385. As this rule has never been acted on in this court we should deem it a rigorous proceeding to enforce it now for the first time, and therefore enlarge it till the next term, of which notice must be served on the complainant

¹ [Reported by Hon. Henry Baldwin, Circuit Justice.]