

O'BRIEN COUNTY v. BROWN.

[1 Dill. 588.]

Circuit Court, D. Iowa.

1871.

LIMITATION OF
ACTION—FRAUD—NOTICE—JURISDICTION—FRAUDULENT
JUDGMENT.

1. The circuit court has jurisdiction of a bill in equity filed by defendant in a judgment rendered therein, against an assignee of a judgment plaintiff, to set aside the judgment for fraud, though both assignee and plaintiff be citizens of the same state, as such proceeding is merely a continuation of the original suit.

[Cited in Re Sabin, Case No. 12,195.]

2. Discovery of fraud, in the meaning of the statute of limitations, is not to be imputed to a county simply because it was known to its officer who committed it

In equity.

H. B. Wilson and T. M. Dye, for county.

Joy & Wright and Withrow & Wright, for defendant.

DILLON, Circuit Judge. We decide the following points:

1. The court has jurisdiction of a bill in equity, filed by the defendant in a judgment rendered therein, against an assignee of the judgment plaintiff, to set aside the judgment for fraud, though such assignee and the complainant be citizens of the same state. Such a proceeding is, in substance, a continuation of the original suit *Jones v. Andrews*, 10 Wall. [77 U. S.] 327; *Dunn v. Clarke*, 8 Pet [33 U. S.] 1; *St. Luke's Hospital v. Barclay* [Case No. 12,241]; *Dunlap v. Stetson* [Id. 4,164].
2. The bill brought by a county to set aside a judgment, charged to have been fraudulently procured on county warrants fraudulently

issued (the assignee of the judgment being charged with complicity and notice of the frauds alleged), held sufficient on demurrer. *Clark v. Des Moines*, 19 Iowa, 199; *Clark v. Polk Co.*, Id. 248; *Burtis v. Cook*, 16 Iowa, 194.

3. Discovery of the fraud, within the meaning of the statute of limitations, is not to be imputed to the county from the moment the fraud was perpetrated, simply because it was known to the officer who committed it *Martin v. Smith* [Case No. 9,164].

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