

plainant, after diligent effort, seems to have been unable to ascertain them.

It is certainly not too much to say upon this record, and the evidence before the court, that the evidence on the part of Blodgett in respect to the payment of the consideration stated in the deed is unsatisfactory, and that such proof was vital in order to uphold the deed, surrounded as it is in other respects with suspicion. This being so, it must be held that the burden of showing that the paper was of value, and that Blodgett was a *bona fide* purchaser, rests upon him. Such, in substance, is the doctrine announced by the supreme court of the United States in two cases at least. *Clements v. Moore*, 6 Wall. 299; *Clifton v. Sheldon*, 23 How. 481.

The result is that there must be decree for complainant in accordance with the prayer of his bill, and it is so ordered.

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TICE v. SCHOOL-DISTRICT No. 18, ADAMS COUNTY.

(Circuit Court, D. Nebraska. 1883.)

**BILL TO VACATE JUDGMENT—LIMITATION.**

A bill in chancery brought to vacate a judgment obtained in a court of law, and to order a new trial, takes the place of the ordinary petition for a new trial, provided for by the Code of Civil Procedure of this state, and must be brought within one year from the rendition of the judgment sought to be vacated.

In Equity.

*Harwood & Ames*, for plaintiff.

*O. B. Hewett*, for defendant.

DUNDY, D. J. The complainant in this case filed his bill on the sixth day of February, 1882. The object of the suit and the prayer of the bill is to vacate a judgment heretofore rendered in this court, on the ground of newly-discovered evidence, so that the cause may be tried again upon its merits. An inspection of the record shows that on the twentieth day of December, 1879, this plaintiff commenced an action at law against this defendant in this court for the purpose of recovering on certain bonds claimed to have been issued by the defendant to aid in building a school-house for the benefit of the district. The execution of the bonds and all liability thereon was denied by the district. A jury was duly waived, and a trial was thereupon had upon the merits of the controversy. In the trial the issues were determined in favor of the defendant, and the suit was

then dismissed at the costs of this complainant. This trial was had and the judgment rendered on the \_\_\_\_\_ day of November, 1880. In that trial the members of the school board were all witnesses, and, it may be proper to say, were the principal witnesses. The plaintiff relied upon their testimony, in a great measure, to sustain his cause of action. These witnesses were the school board at the time the bonds bear date, and are the same persons whose names appear on the bonds as members of the school board, and who, as the plaintiff claims, issued the bonds in behalf of the school-district. This complainant now claims to have been taken by surprise to see how little, how *very* little, the said school board knew of the circumstances connected with the issuing of the bonds then in suit. Viewed in the light of subsequent developments, this *surprise* seems to be well founded, and if timely movement had been made in the right direction, the complainant would have been entitled to the relief sought in this action.

The view that I take of this proceeding makes it unnecessary to discuss the character of the new testimony which the complainant claims to have discovered since the first trial, and which he was unable to produce thereat. If what is claimed by complainant in that regard be true, then, certainly, the newly-discovered testimony would have been very material for the complainant when his cause was tried on its merits.

The Code of Civil Procedure of this state has abolished the distinction between actions at law and actions in chancery. But it is fair to presume, and I, therefore, assume, that under it all individual wrongs can be redressed, and all rights maintained, providing, as it does, a complete remedy for all sorts of grievances, whether real or imaginary. Where a cause has been tried upon its merits, and a judgment has been rendered, the judgment so rendered may be reviewed or modified or vacated, and a new trial had, under certain circumstances, and on such terms as may seem to be just. Where errors are committed during the progress of a trial the injured party has full opportunity to have the errors complained of corrected in the court where the errors may be committed. If judgment goes against a party who may feel aggrieved, and he afterwards discovers new, important, and material testimony that he knew not of, and could not discover by using due diligence in time to produce such testimony on the first trial, he may then file a petition for a new trial; but this must be done within one year from the rendition of the judgment sought to be vacated by filing such petition. The complainant, in this

case, has resorted to the familiar practice of filing his bill in equity to vacate the judgment complained of, instead of relying on the Code practice in that behalf. The right to do so must be upheld. In analogy there is but slight difference in the two modes of proceeding, and, after much thought and a careful consideration of the whole subject, I am unable to discover any good and sufficient reason why either mode of proceeding cannot be maintained. I must hold, then, that the filing of the bill, in this and similar cases, simply takes the place of the petition for a new trial provided for by the said Code of Civil Procedure, and must be governed, at least to some extent, by that Code. It seems to be the recent policy of the laws of the United States to conform the proceedings in the federal courts to the practice prevailing in the state courts. There is much good reason in this. After all, the laws of the state are administered in the federal about the same as they are in the state courts, and there is no apparent reason why there should be any difference in results to be attained in resorting to either. The same *rights* are recognized in both. The same limitations and restrictions are recognized and enforced in both. And the only difference to be observed in enforcing, upholding, or maintaining either, is in the *manner* of doing it. That is the application of the remedy provided to accomplish the same results.

Applying this principle to the present case will require the dismissal of suit, though the bill is in many respects a meritorious one. Had it been filed in time, I doubt not the judgment complained of would have been overturned for reasons stated in the bill. But statutes limiting the time within which new trials may be granted, must be looked on with great favor, and their beneficial results must not be denied to those for whose benefit they were enacted. This suit was not commenced until 14 or 15 months after the rendition of the judgment sought to be vacated. As the complainant seeks to have the judgment complained of annulled on the ground of newly-discovered evidence, which might have lead to a different result had the same been produced on the trial, it is my deliberate judgment that his application comes too late; and that, to entitle him to the relief sought in this action, it was necessary for him to file his bill to vacate the judgment complained of within one year from the date of entering the same.

The bill must, therefore, be dismissed; and it is so ordered.

## STATE NAT. BANK OF LINCOLN, NEBRASKA, v. YOUNG and others.

(Circuit Court, D. Nebraska. 1883.)

## 1. LETTER OF CREDIT—WHAT IS NOT.

A letter such as the one following, written by the defendants to the plaintiff, does not constitute a letter of credit:

“CHICAGO, 7-23-1880.

“*State National Bank, Lincoln, Nebraska*—GENTLEMEN: Mr. Dawson, of Dawson & Young, has been to see us, and has explained their business to our satisfaction, and we wish them to continue with us, and we expect to take care of them and pay drafts as heretofore.

“Respectfully,

WILLIAM YOUNG & Co.”

## 2. CONTRACT—AGREEMENT TO ACCEPT DRAFT.

Nor does the same amount to an agreement to accept any drafts which Dawson & Young, or either of them, might draw on William Young & Co., the defendants. To constitute a valid and binding promise to accept the draft of another, the draft must be described in terms not to be mistaken.

## 3. SAME—DEPARTURE FROM TERMS.

Any departure from the terms of an agreement to accept the bill or draft of another, will not bind the party sought to be charged as acceptor.

Demurrer to Petition.

*Mason & Whedon*, for plaintiff.

*Bisbee, Ahrens & Hawley* and *Field & Holmes*, for defendants.

DUNDY, D. J. It is stated in the petition that Dawson & Young were largely dealing in and shipping live-stock to Chicago; that generally they consigned the same to William Young & Co., the defendants, at Chicago, who were then doing business as commission merchants; that Dawson & Young were in the habit of drawing their drafts on Young & Co. for the stock shipped, and that the same were cashed by the plaintiff at the request of Dawson & Young, and that the same, with one exception, were paid by the defendants; the payment of one was refused, and that the same was afterwards paid by Dawson; that subsequently Dawson went to Chicago and saw the defendants, and arranged with them for future acceptances, and, pursuant to the arrangement then made, the defendants wrote to the plaintiff a letter, of which the following is a copy:

“CHICAGO, 7-23-1880.

“*State National Bank, Lincoln, Nebraska*—GENTLEMEN: Mr. Dawson, of Dawson & Young, has been to see us, and has explained their business to our satisfaction, and we wish them to continue with us, and we expect to take care of them and pay drafts as heretofore.

“Respectfully,

WILLIAM YOUNG & Co.”