

plain that which was before uncertain, and impresses on the transaction the precise value of the bargain. It will tolerate no subterfuges of evasion which permit wagering in the duration of human lives, so liable to become enticing to a human nature overfond of dealing in "futures" of all kinds; but it cannot be invoked to relieve insurers against overestimates of the value of the insurable interest, or the assured from larger premiums than the insurance was worth. The English statute may be more precise in some of its requirements, but substantially the result is the same.

This case is very much like *Law v. London Indisputable Life Policy Co.* 1 Kay & J. 223; S. C. 3 Eq. 338; and 2 Big. Ins. Cas. 404, except that there the interest was founded in a legacy, while here it is based on a leasehold, and there the insurance was for a limited term, while here it was for the whole life; and this case illustrates the justice of either discarding altogether the notion of indemnity for *actual* losses, as the law does, or in measuring the loss, to take into account the premiums paid, and a fair return of them, with interest and profits, less cost of insurance, according to the scheme of life insurance; for the plaintiff here has actually paid in premiums nearly as much as the amount of the policy, to say nothing of the rental value of the remainder of the leasehold interest.

Overrule the motion.

JONES, Assignee, etc., v. WELLING.

(District Court, S. D. New York. May 28, 1883.)

AMENDMENT—LACHES—RULE 69 IN EQUITY.

Leave to amend a bill of complaint in bankruptcy should not be granted in case of great laches where the application is made several years after knowledge of the facts, and after the testimony has been closed

Motion for Leave to Amend Bill of Complaint.

J. W. Little and *I. T. Williams*, for complainant.

Wm. M. Denman, for defendant.

BROWN, J. The complainant, having qualified as assignee of the bankrupt on the thirteenth of June, 1879, filed his bill of complaint in equity on the twenty-fifth of October, 1879, for the purpose of setting aside as fraudulent a certain assignment of a mortgage made by the bankrupt to the defendant prior to the proceedings in bankruptcy. An answer was filed on the second day of December, 1879, in which

it was pleaded that the action had not been commenced within two years, as required by section 5057. Thereafter, witnesses were examined on both sides, and the testimony substantially closed about three years since, although no formal order was entered to that effect. A motion is now made for leave to amend the complaint by inserting a clause that the alleged fraud was not discovered by the assignee until January, 1878, less than two years before filing the bill.

No precedent is cited for granting leave to amend by raising new issues after so long delay, and so long after the testimony has been substantially closed. The general interests of justice, the satisfactory trial of causes, the ascertainment of the truth, all demand the diligent prosecution of legal rights while the facts are fresh and within the memory of witnesses, and the truth more easily learned. *Speidell v. Henrici*, 15 FED. REP. 753. The sixty-ninth general rule in equity, limiting the time for taking testimony, is directed to this end; and in cases in bankruptcy the speedy settlement of estates, as designed by law, re-enforces the same policy. The twenty-ninth rule in equity requires, moreover, that it must appear that "the matter of the proposed amendment * * * could not with reasonable diligence have been sooner introduced into the bill." The present application is very far from complying with this rule. However much disposed in some respects I might be to grant this motion, the rules are intended to prevent such delays, and I am unwilling to set a precedent for what would seem to me a most unwise practice.

If testimony has already been taken in the cause concerning the non-discovery of the alleged fraud, without objection on the ground that it was not pleaded, the testimony will stand, and the pleadings will, on the trial, be deemed amended in conformity thereto. If such testimony was offered, and objected to on the ground that it was not pleaded, then the complainant had notice too long ago to apply for amendment now. If no such evidence was offered, the court should not allow new issues to be raised by amendment several years after the case has slumbered and slept upon the old ones.

UNITED STATES *v.* MINGES.

(*Circuit Court, D. South Carolina. April 21, 1883.*)

1. SECRETING SEAMEN DESERTING FROM FOREIGN VESSELS.

It is not an offense under section 4601, Rev. St., knowingly to harbor or secrete seamen who desert from foreign vessels.

Information against J. A. Minges for harboring and secreting for six days two seamen belonging to the bark Dagma, knowing them to belong thereto, in violation of section 4601, Rev. St. Demurrer because the bark Dagma is not alleged to be an American vessel.

The bark Dagma is a Norwegian vessel. There is a treaty between the United States and Sweden and Norway for imprisonment and return of deserting seamen. Public Treaties, 740.

John Wingate, Asst. U. S. Atty., for the United States.

J. P. K. Bryan, for defendant.

BOND, J. The demurrer in this case raises the question whether it is an offense against the United States to harbor seamen deserting from a vessel of a foreign power. The information alleges that the seamen harbored belonged to the bark Dagma, but does not allege that the Dagma was an American vessel.

The prosecution contend that the words of section 4601, Rev. St., "any seaman belonging to any vessel," under which this information is filed, are unlimited, and apply equally to cases of desertion from domestic and foreign vessels. Upon examination of the statutes, however, the court is of opinion that section 4601 is to be read in connection with and is limited by the words of section 4612, which provides that in the construction of this title ("Merchant Seaman") the word "seaman" shall be taken to be one employed, etc., "on a vessel belonging to any citizen of the United States," and the word "vessel" shall be understood to comprehend every description of "vessel to which the provisions of this title may be applicable." Surely, "Title LIII, Merchant Seamen," Rev. St., is not applicable to foreign vessels.

This conclusion is further confirmed by reference to the merchant shipping act of 1790, (from which section 4601, Rev. St., is taken,) which refers, in all its provisions, to American vessels and American seamen.

The remedy which, by treaty with foreign powers, the United States gives in cases of foreign seamen deserting from foreign vessels

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