

this case would end, leaving every question in dispute between the parties where it stood when this case was begun. This would be proceeding by inversion. The method has too much the air of that proceeding by which a man is first hung and tried afterwards to find favor in a court of equity.

Let an order be entered dissolving the injunction and discharging the property from the custody of the receiver, and requiring him to return the same to the officer or person from whom he received it, and to pass his accounts in the master's office without delay.

—see *City of Chicago v. Hutchinson*, 15 FED. REP. 129; *Glover v. Shepperd*, Id. 833; *Phoenix Mut. Life Ins. Co. v. Walrath*, 16 FED. REP. 161; *Public Grain & Stock Exchange v. Western Union Tel. Co.* Id. 289.—[Ed.]

## TICE v. SCHOOL-DIST. NO. 18, ADAMS COUNTY, NEBRASKA.

(Circuit Court, D. Nebraska. August, 1883.)

### 1. CIRCUIT COURT—CHANCERY JURISDICTION—STATE STATUTE—NEW TRIALS.

The statute of Nebraska, regulating the practice of the state court in determining applications for new trials, is not binding upon the circuit court of the United States when exercising its chancery jurisdiction; and the limitation in the state statute which forbids the state courts to grant new trials after one year, so far from being a limitation upon the circuit court, sitting in chancery, may be the very ground of its jurisdiction; especially where the facts which make it proper that the judgment should be set aside have been fraudulently secreted until the year has passed.

### 2. SAME—JURISDICTION, HOW CONFERRED.

The chancery jurisdiction of the circuit court is conferred by the constitution of the United States and the acts of congress, and is not derived from or limited by state laws. The rules governing its exercise are the same in all the states, and are according to the practice of courts of equity in England, as contradistinguished from courts of law.

### 3. SAME—STATE STATUTES OF LIMITATIONS.

Federal courts of equity usually follow by analogy state statutes of limitations, but they will not do so when the effect of such a statute in any case is to limit their general chancery jurisdiction; and although a state statute of limitations may make no exception in favor of a party who is prevented from suing by reason of a concealed fraud, they will enforce such an exception because it is a part of the chancery law as administered in those courts, which the state cannot change.

### 4. NEW TRIAL—POWER OF CHANCERY COURT TO DECREE.

It is a general principle of law that a court of chancery may decree a new trial after the courts of law are barred by lapse of time from so doing.

### On Rehearing.<sup>1</sup>

Bill in equity brought to set aside a judgment at law in this court, and for a new trial upon the ground of surprise at the trial, and newly-discovered evidence. The original suit was brought by the plaintiff to recover judgment upon certain bonds alleged to have been issued

<sup>1</sup> See S. C. 14 FED. REP. 886.

by the defendant school-district for the purpose of building and furnishing a public school-house. The district interposed the defense that the bonds were never issued by it by a vote of the district, and that no money was ever received by the district for the same. The plaintiff was a purchaser of the bonds in the market, and had no personal knowledge of the facts. Upon applying to the officers of the district for information, he was informed by them that they had no knowledge of the issuance of said bonds, or of the receipt of any money thereon by the district. On the trial of the original case one Alexander, who was then the treasurer of said district, testified that he was likewise such treasurer at the time the bonds were issued, and that he had no knowledge or recollection of the execution or issuance of the same, or of the receipt of any money by the district therefor, and the other officers of the district testified to substantially the same effect. The residents of the district and its officers seem to have combined and conspired together to keep plaintiff from obtaining any evidence to establish the fact that the bonds were issued and the money thereof received by the district and used to erect a school-house. Nevertheless, such now appears to be the fact. In this case Alexander testifies that he *now* remembers that the *bonds* were sold for cash, and that the cash was used in the erection of a school-house. These facts, however, were not discovered until more than one year from the date of the judgment. The statute of Nebraska provides that "where the grounds for a new trial could not with reasonable diligence have been discovered before, but are discovered after, the term at which the verdict, report of referee, or decision was made, the application may be made by petition, filed as in other cases, on which a summons shall issue," etc.; but "no such petition shall be filed more than one year after the final judgment was rendered." The district judge held, on final hearing, that this statute was controlling, and that, therefore, the bill was filed too late, but granted a rehearing, and requested the circuit judge to hear and determine the question.

*Harwood & Ames*, for complainant.

*O. B. Hewett*, for defendant.

McCRARY, J. After much consideration, I have reached the conclusion that the statute of Nebraska, regulating the practice of the state courts in determining applications for new trials, is not binding upon this court when exercising its chancery jurisdiction. Our jurisdiction in chancery is not derived from or limited by state laws. The rules governing its exercise are the same in all the states, and are according to the practice of courts of equity in the parent country, as contradistinguished from courts of law. It is a jurisdiction conferred by the constitution of the United States and the acts of congress, and if it could be controlled or varied by state legislation, it could be extinguished by the same authority. This proposition was strongly stated by the supreme court of the United States in the early case of

*Robinson v. Campbell*, 3 Wheat. 218, and has been since repeatedly recognized by that court. It is true that the federal courts of equity usually follow by analogy state statutes of limitations; but they will not do so if the effect of such a statute in any case is to limit their general chancery jurisdiction. This, although a state statute of limitations may make no exception in favor of a party who is prevented from suing by reason of a concealed fraud. Yet federal courts of equity will enforce such an exception because it is a part of the chancery law as administered in those courts, and which the state cannot change. *Johnson v. Roe*, 1 McCrary, 162; [S. C. 1 FED. REP. 692.]

The present case might, perhaps, be decided upon this doctrine, for it is clearly established by the proof that the defendant, by its officers and agents, fraudulently suppressed the fact that the bonds in question had been regularly issued, sold for cash by defendant, and the proceeds used by the defendant to build a school-house, and they concealed these facts until they supposed it was too late for plaintiff to get relief; after which they disclosed them, and one of them has now sworn to them.

However this may be, I think the statute above mentioned, if construed to mean that a bill in chancery cannot be filed in a federal court to set aside a judgment at law, upon any ground, after one year from its rendition, would be an encroachment upon the equity jurisdiction of the federal judiciary. Anciently, appeals to the courts of chancery for relief against unconscionable judgments at law were frequent; but in modern times courts of law are themselves authorized to grant new trials upon liberal terms, and this mode of relief is, in general, ample, so that the equity jurisdiction in such cases is seldom invoked. It nevertheless exists, and it is a mistake to say that it is simply co-extensive with the powers granted by statute to courts of law. It more frequently begins precisely where the power of the law courts ends. The jurisdiction often depends upon the fact that the court rendering the judgment is powerless to afford a remedy. I hold, therefore, that the limitation in the state statute which forbids the state courts to grant new trials after one year, so far from being a limitation upon this court, sitting in chancery, may be the very ground of our jurisdiction, especially where the facts which make it proper that the judgment be set aside have been fraudulently secreted until the year has passed.

It appears that even the state courts of Nebraska, when sitting in chancery, disregard the limitation of one year. Thus, in the case of *Horn v. Queen*, 4 Neb. 108, the supreme court of that state, construing this very statute, held that where it would be proper for a court of law to grant a new trial, if the *application had been made while that court had the power*, it is equally proper for a court of equity to do so if the application be made when the court of law has no means of granting such trial. Certainly, if this be a sound rule for the government of the state court whose jurisdiction, both at law and in

equity, is derived from state law, it is, *a fortiori*, the sound rule here. That it is a general principle of equity law that a court of chancery may decree a new trial after the courts of law are barred from so doing, is abundantly established by authority. Hil. N. T. 588, note (a); *Hoskins v. Hattenback*, 14 Iowa, 314; Story, Eq. Jur. § 887; *Fletcher v. Warren*, 18 Vt. 45; *Colyer v. Langford's Adm'rs*, 1 A. K. Marsh. 237; *Ballance v. Loomiss*, 22 Ill. 82.

The order dismissing the bill must be set aside; and it is so ordered.

### MORGAN v. TOWN OF WALDWICK and others.

(Circuit Court, W. D. Wisconsin. June 26, 1883.)

#### TOWNS OF WALDWICK AND MOSCOW, WISCONSIN—LIABILITY FOR RAILROAD AID BONDS—DIVISION OF OLD TOWN.

As the evidence in this case shows conclusively that the people of both of the present towns of Waldwick and Moscow, formed by the division of the old town of Waldwick, in Iowa county, Wisconsin, considered and believed, at the time of the division of the old town of Waldwick, that each town was liable for its just proportion of the aid voted to the Mineral Point Railroad Company, represented by the bonds of the old town of Waldwick, for aid voted thereto, and the division was voted on that understanding, and would not have been voted except for such understanding, and the construction of the order of the supervisors of the original town making the division, and the liability of both towns for their respective portions of the debt, have been repeatedly recognized by the people and officers of said towns, and acted upon accordingly for a period of 20 years or more, although the order of the board of supervisors was somewhat equivocal, it is *held* that the town of Moscow should be held liable for the proportion of said debt then assumed by it, although there may be doubt as to the legal effect of the action dividing the two towns, and that the town of Waldwick should pay the balance.

In Equity.

*E. Marriner*, for complainant.

*Vilas & Bryant*, for defendants.

BUNN, J. In 1856 the town of Waldwick, in Iowa county, Wisconsin, issued its bonds to the amount of \$10,000, with interest at 8 per cent., to the Mineral Point Railroad Company, to aid in the construction of said road. These bonds were negotiated, and the larger portion of them came into the hands of the plaintiff for value. At the time of the issuing of the bonds, the town of Waldwick was composed territorially of two townships of land running east and west, through both of which the road, as built by the said company, ran. In 1859 the people of the town of Waldwick petitioned the county board of supervisors of Iowa county to divide the town on the township line running north and south, through the middle. A popular vote was taken on the question, and it was carried by a large majority, and on the twenty-ninth of November, 1859, the county board of said county, having ample power by statute to make new towns, to