

4. There being no confederacy, nor conspiracy, nor possession, nor title alleged as to Thomas Peters, and there being no case set out for relief against him, and no relief, neither for discovery nor for accounting, nor for any other thing, it is difficult to see how or why he should be a party. On this ground the demurrer should be sustained.

5. This court has jurisdiction only when over \$500 is involved. This jurisdictional fact should appear affirmatively. Demurrer sustained on this ground.

6. I cannot see how this case can be taken out of the general rule that the complainant should do equity. At all events, no case is made in the bill showing any state of facts from which the court can infer that the government elects, or is entitled to claim, the sum paid to the receiver as a forfeiture. As the case stands, on the facts alleged, the demurrer should be sustained on this ground.

7. If the lands entered by and patented to Nancy Brown had not been previously offered at public sale, in accordance with section 2303, then the title or patent issued was absolutely void, and in that case the complainant would have an adequate remedy at law to recover possession of land, and rents and profits. Whether or not there was such previous offering at public sale does not appear from the bill. As it was a prerequisite to the entry of the land and the issuance of the patent, the presumption is that the land was so offered. Considering this, and that the government seeks to have the patent surrendered and canceled, and may be entitled to have the deed from Nancy Brown to the Pratt Coal & Coke Company annulled and the record thereof erased, and may be entitled to a more full and complete account than could be had in a suit for rents and profits, the demurrer on this ground is overruled.

Decree accordingly.

MCDONNELL v. EATON.¹

(Circuit Court, E. D. Texas. November, 1883.)

1. EQUITY PLEADING—PARTIES IN EQUITY.

In a suit to invalidate a marriage settlement in favor of a dead person, and to set aside her will, her heirs at law are parties in interest, and necessary parties to the suit.

2. SAME—MULTIFARIOUSNESS.

Where two distinct subjects are embraced in the bill, viz., the annulment of a marriage settlement and the annulment of a will, the necessary parties to the suit may be the same, but their interests and attitude are decidedly at variance, and the bill is bad for multifariousness.

3. PRACTICE IN FEDERAL COURTS.

If such a bill had been originally filed in this court, the demurrer would have been simply sustained; but as the case was brought in the state court, where

¹Reported by Joseph P. Hornor, Esq., of the New Orleans bar.

it is probable the practice would warrant the joinder of the several subjects included in the bill, the complainant was allowed to reform his pleadings so as to conform to the equity rules and general chancery practice of the federal courts.

In Equity. On demurrer.

Ballinger & Mott, for complainant.

Mr. Scott and Scott & Levi, for defendant.

PARDEE, J. The suit is one to set aside a marriage settlement made by complainant in favor of Mary Agnes Eaton and defendant, Stephen V. Eaton; and also to annul a will purporting to have been made by Mary Agnes Eaton in favor of Stephen V. Eaton. Mary Agnes Eaton died without issue. Her heirs at law are the present complainant, the present defendant, and decedent's brothers and sisters. The only party defendant is Stephen V. Eaton. The other heirs at law of Mary Agnes Eaton are neither made parties nor accounted for. The bill is demurred to for want of proper parties and for multifariousness. It seems to be clearly defective for want of parties. As Mary Agnes Eaton is dead, it is absolutely necessary that in order to invalidate a marriage settlement made in her favor the parties in interest, to-wit, her heirs, must have their day in court. The heirs at law of Mary Agnes Eaton are also necessary parties to the suit, so far as it has for an object the annulling of her last will and testament.

The demurrer seems also well taken on the ground of multifariousness. Two distinct subjects are embraced in the bill, to-wit, the annulment of a marriage settlement and the annulment of a will. In these two matters the necessary parties to the suit may be the same, but their interests and attitude are decidedly at variance. The heirs of Mary Agnes Eaton are interested with the complainant, McDonnell, to annul and avoid the will, and against him and with defendant, Eaton, to sustain the marriage settlement. If the bill had been originally filed in this court we would simply sustain the demurrer. But as the case was brought in the state court, where it is probable the practice would warrant the joinder of the several subjects included in the bill, we will order that complainant reform his pleading so as to conform to the equity rules of this court and the general chancery practice in the federal courts.

This order practically sustains the demurrer; the costs thereof will therefore be taxed to complainant.

MORRILL, J., concurs.

DREW v. VALENTINE.

(Circuit Court, N. D. Florida. December 24, 1883.)

1. GOVERNMENT LANDS—HOW TITLE TO BE DIVESTED.

There is no way for titles to land to be divested out of the United States except in strict pursuance of some law of the United States; and, as no statute of limitations runs against the United States, occupancy and possession alone, even for a great length of time, cannot ripen into title as against the United States.

2. SAME—EFFECT OF FRAUDULENT SALE OF LAND NOT SUBJECT TO ENTRY.

No sale of land, not subject to entry by the receiver at a land-office, can divest either the legal or equitable title out of the United States. The act of congress of June 15, 1844, does not cure such sales, as that act was only intended to embrace such lands as were subject to entry.

In Equity.

Fleming & Daniel and Jno. T. Walker, for complainant.

Horatio Bisbee, Jr., for respondent.

SETTLE, J. I have examined this case with an earnest desire to find something in the record to support the claim of the complainants; for I confess I have no sympathy with those who are ready and willing to take advantage of the ignorance or mistakes of others, and to appropriate to their own use property which has been greatly enhanced in value by the labor of others. But, whatever my feelings may be upon a moral aspect of the case, I am bound by well-established principles of law and equity, and must announce such judgments and decrees as they dictate. An examination of the statutes and the decided cases convinces me that there is no way for titles to land to be divested out of the United States except in strict pursuance of some law of the United States; and as no statute of limitations runs against the United States, occupancy and possession alone, even for a great length of time, cannot ripen into title as against the United States.

It cannot be claimed that the transactions between Goff and the receiver at St. Augustine divested either the legal or equitable title out of the United States, for the reason that the lands were not subject to entry; but it is claimed that the act of congress of June 15, 1844, cured that defect, and vested an equitable title in Goff. After an examination of the statute, I am satisfied that it was only intended to embrace such lands as were subject to entry.

The objection that the statute could not embrace these lands, because there was no evidence in the general land-office that application for entry was ever made, is not tenable, for the commissioner, in his letter to Hon. J. J. Finley, states that such entries are to be found in the general land-office; but the insurmountable obstacle that the lands were not subject to entry still presents itself.

The complainants allege that the Valentine scrip can only be located on unoccupied and unappropriated lands, and that the lands in