

## WILLS v. PAULY.

(Circuit Court, S. D. California. June 13, 1893.)

## EQUITY PRACTICE—STATE STATUTES—BILL BY MARRIED WOMAN.

A state statute allowing a married woman to sue in her own name does not govern the federal courts in equity suits, and where the fact appears on the face of the bill the same is demurrable.

In Equity. Suit by Mary E. Wills against A. Pauly. On demurrer to bill. Sustained.

*Millay & Bennett* and *Del Valle & Munday*, for complainant.  
*W. Cole*, for defendant.

Ross, District Judge. This is a suit in equity, brought by the complainant alone, and, as the bill shows that complainant is a married woman, the demurrer raises the point, among others, that the suit cannot be maintained. In response to this point the defendant cites and relies on section 370 of the Code of Civil Procedure of California, which provides that a married woman may sue alone "when the action concerns her separate property, or her right or claim to the homestead property." If the present was an action at law, the provisions of the statute referred to would be applicable and enforceable in this court; but, being a suit in equity, the state statute has no application here. Jurisdiction in equity is exercised by the federal courts uniformly throughout the United States, and is unaffected by state legislation. "The chancery jurisdiction given by the constitution and laws of the United States," said the supreme court in *Boyle v. Zacharie*, 6 Pet. 657, "is the same in all the states of the Union, and the rule of decision is the same in all. In the exercise of that jurisdiction, the courts of the United States are not governed by the state practice; but the act of congress of 1792, c. 36, has provided that the modes of proceeding in equity suits shall be according to the principles, rules, and usages which belong to courts of equity, as contradistinguished from courts of law. And the settled doctrine of this court is that the remedies in equity are to be administered, not according to the state practice, but according to the practice of courts of equity in the parent country, as contradistinguished from that of courts of law; subject, of course, to the provisions of the acts of congress, and to such alterations and rules as, in the exercise of the powers delegated by those acts, the courts of the United States may, from time to time, prescribe." See, also, *Bennett v. Butterworth*, 11 How. 669; *Green v. Creighton*, 23 How. 90, 105. It is the rule in equity practice that a married woman must sue by her *prochein ami*, and when it appears that she does not so sue the bill may be demurred to. Story, Eq. Pl. § 494; Daniell, Ch. Pl. & Pr. p. 143; Mitf. Eq. Pl. 153, 154. Provision for the appointment of the next friend is made by rule 87 of the equity rules. For the reason stated the demurrer must be sustained. So ordered.

HANFORD v. DAVIES *et al.*

(Circuit Court, D. Washington, N. D. June 7, 1892.)

No. 89.

**1. CONSTITUTIONAL LAW—OBLIGATION OF CONTRACTS.**

The prohibition of the constitution of the United States against the enactment of state laws that shall impair the obligation of contracts applies only to the adoption of a constitution, or the enactment or adoption of a statute, or the exercise of some form of legislative power subsequent in time to the contract.

**2. SAME.**

Where the land of F. was sold for unpaid taxes, and a tax deed was executed therefor, and the same land was subsequently sold at probate sale as the property of F. in administering upon his estate, *held*, that the obligation of the contract of the owner of the tax deed was not impaired by the probate sale within the prohibition of the constitution.

*(Syllabus by the Court.)***In Equity on Demurrer to the Bill.***Howe & Corson*, for complainant.*Junius Rochester*, for defendants.

GILBERT, Circuit Judge. The complainant brings suit, alleging in his bill, in substance, that in October, 1878, his grantor acquired from the territory of Washington a tax title to certain land in King county, sold for unpaid taxes as the property of one Lumley Franklin; that possession was taken by complainant's grantor under said tax deed, and maintained until the conveyance of the property to complainant in September, 1885, since which time he has been in possession and made valuable improvements; that on August 8, 1887, by order of the probate court of King county, an administrator of the estate of said Franklin, then deceased, was appointed, and thereafter, upon petition of the administrator and under the order of the said court the land in question was sold as the property of said decedent, and to pay a tax claimed by the territory to be due from said Franklin; that said sale was made in violation of the contract whereby the territory sold said land to complainant's grantor for unpaid taxes; that one of the defendants became the purchaser of said property at the probate sale, and a deed was made to him in violation of the obligation of said first contract with complainant's grantor, and in violation of article 1, § 10, of the constitution of the United States, and of sections 1851 and 1891, Rev. St. U. S., which make the provisions of the constitution applicable to the territories; that by the law in force at the time complainant's tax deed was acquired the tax deed was made presumptive evidence of the regularity of all former proceedings, and suit for the recovery of the property was prohibited after the expiration of three years from the date of recording of the deed, except in cases where the tax had been paid and the land redeemed; that the defendants had notice of the complainant's right, and their administrator's deed was procured in pursuance of a conspiracy to deprive him of said property, and said property is worth \$8,000. The prayer of the bill is that the