

in possession, and the plaintiff may sue him at law, and obtain adequate and complete relief. He says:

"It [the Iowa statute] thus enlarges the powers of a court of equity, as exercised in the state courts; but the law of the state cannot control the proceedings in the federal courts, so as to do away with the force of the law of congress declaring that 'suits in equity shall not be sustained in either of the courts of the United States, in any case where a plain, adequate and complete remedy may be had at law,' or the constitutional right of parties in an action at law to a trial by a jury." 138 U. S. 152, 11 Sup. Ct. 276.

In the case of *Wehrman v. Conklin*, 155 U. S. 314, 15 Sup. Ct. 129, the question was again considered by the supreme court of the United States. The cases were carefully and clearly reviewed in an opinion by Justice Brown, and the effect of them was stated to be that they "denied the power of the federal courts to afford relief under such statutes, where the complainant was not in possession of the lands." 155 U. S. 325, 15 Sup. Ct. 129. The same ruling has been made, for the same reasons, in regard to statutes that have been passed in various states, authorizing the institution of suits by simple contract creditors to set aside fraudulent conveyances by their debtors. *Scott v. Neely*, 140 U. S. 106, 11 Sup. Ct. 712; *Cates v. Allen*, 149 U. S. 451, 13 Sup. Ct. 883, 977; *Hollins v. Iron Co.*, 150 U. S. 371, 14 Sup. Ct. 127. It was pressed upon that court, with regard to both classes of statutes, that suits under them had been maintained; and, as to each, the reply of the court was that it was a defense that might be waived, and was waived if not made before decree, and that in the cases referred to it had been so waived. 150 U. S. 380, 14 Sup. Ct. 127.

The questions presented by the pleadings and evidence in this case have regard largely to the dates when defendants entered upon and occupied the lands in dispute, the extent and character of their possession, and their claim of title as arising therefrom. These are questions that are appropriately triable at law, and the defendants have a right, under the constitution and statutes of the United States, to demand that they shall be thus tried. They presented their demand in apt time, and have in no manner waived it. It follows that the causes must be dismissed, without prejudice, however, to the rights of complainants to assert, in actions at law, any title they may have to the lands.

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SLOAN et al. v. MITCHELL et al.

BOUND v. SOUTH CAROLINA RY. CO.

(Circuit Court of Appeals, Fourth Circuit. November 11, 1895.)

No. 114.

**PRACTICE—ALLOWANCE TO COUNSEL—APPEAL.**

An order making an allowance to counsel in a foreclosure suit, made after investigation by the court with the aid of experts, should not be disturbed on an appeal taken by parties who had full opportunity to make objection to the order, but produced no evidence tending to indicate their own view of what the allowance should be.

Appeal from the Circuit Court of the United States for the District of South Carolina.

Samuel Lord, for appellants.

J. P. K. Bryan, for appellees.

Before GOFF, Circuit Judge, and HUGHES, District Judge.

HUGHES, District Judge. The original complainant in the proceeding below, F. W. Bound, was the individual holder of second-mortgage bonds of the South Carolina Railroad Company. He made the trustees of the second mortgage and the trustees of the first mortgage, and an individual holder of bonds of the first mortgage, on which judgment had been obtained, parties defendant to the suit. His bill prayed the foreclosure of the mortgages and the settlement of the debts of the railroad company according to their priorities. The trustees of the second mortgage, under which the complainant held bonds, challenged his right to bring and conduct this suit. But his right was sustained by the court below, and the suit went on to a conclusion there, under the control of the original complainant, and of his counsel, Mitchell & Smith. There was constant and active supervision of the property in its charge by the court, many and various vexed questions having been submitted and passed upon by the court, the litigation in support of the objects of the suit being conducted throughout by the counsel of the original complainant. At the close of proceedings in the suit, the court below made an allowance to these counsel of such an amount of compensation for their services in conducting the suit as it deemed just, proper, and adequate. It had sought and obtained the aid of experts in determining what the amount of this compensation should be. The persons and parties in interest who oppose this allowance, and who are appellants here, had had full opportunity to make objection, but produced no evidence tending to indicate their own view of what the allowance should be. Questions of this sort depend upon the special facts and circumstances of each particular case. Necessarily, they lie largely in the discretion of the judge dealing with them. We see no error in any ruling or order of the court below in these proceedings, and the record shows such facts and circumstances as justified the court below in making the allowances it did; therefore the decree complained of should not be interfered with. The decree of the court below must be affirmed.

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ROSENBERG v. JETT et al.

(Circuit Court, E. D. Arkansas, W. D. February 13, 1896.)

1. HOMESTEAD—OF WIFE DISTINCT FROM HUSBAND.

During coverture, and while the husband and wife are living together, there can be no such thing as a separate homestead of the wife, distinct from that of the husband.

2. DEEDS—ALTERATION—EVIDENCE.

In order to justify a finding that material words, essentially altering the effect of the instrument, have been introduced into a certificate of