ter of great public importance. It concerns not only suitors, but those who may derive rights from them. "Interest reipublicæ ut sit finis litium." Practically, a suit would never be finally terminated, if, as contended by the petitioner, it were true that a change in the interpretation of the law applicable to a cause prosecuted to judgment entitled the party who had been cast in the suit by reason of the prior interpretation to reopen the controversy. In the present matter the alleged change of interpretation took place nearly 4½ years after the final judgment, and the petition for certiorari was presented to this court nearly 5½ years after that judgment. This is a great lapse of time. But, if the petitioner's contention were correct in principle, it would seem to be immaterial whether the lapse of time were of long or short duration, and that such a petition as the one now before us could be urged successfully at any time. If, afterwards, the court should return to the overruled doctrine, the controversy would again have to be readjusted, and so on, indefinitely, as long and as often as the jurisprudence should vary. It is evident that it is far better, in the general interest, that there should be a few cases of apparent hardship, such as the one presented, resulting from a change of jurisprudence, than that litigation should never end. The application for certiorari is refused.

QUINLAN v. CITY OF NEW ORLEANS.[1]

(Circuit Court, E. D. Louisiana. February 10, 1897.)

No. 12,501.

JURISDICTION OF FEDERAL COURTS—DIVERSE CITIZENSHIP—ASSIGNEE OF CHOSE IN ACTION.

Under section 1 of the judiciary act of 1887–88 a circuit court of the United States, where the requisite diversity of citizenship exists between the parties, has jurisdiction of an action by an assignee on a chose in action payable to bearer, and made by a resident municipal corporation, without regard to whether the assignor could have maintained the suit.

This was a suit brought by Mary Quinlan against the city of New Orleans to recover on certain certificates of indebtedness, executed and issued by the city of New Orleans, and made payable to bearer. The city of New Orleans excepted to the jurisdiction of the court, on the ground that "plaintiff's petition contains no averment that this suit could have been maintained by the assignors of the claims or certificates sued upon by Mary Quinlan, and which form the basis of this action." On the argument of the exception, the counsel for the city of New Orleans contended that the plaintiff should have alleged that the assignors of the certificates could have sued in the United States circuit court; and the further contention was made, on behalf of the city of New Orleans, that, even if, under section 1 of the act of March 3, 1887, a suit may be brought in the United States circuit court on a chose in action payable to bearer, and made by a corporation, without alleging that the assignor could have brought such suit,

[1] Affirmed on error. See 19 Sup. Ct. 329.

this suit should be dismissed for want of jurisdiction, because the statute just mentioned refers to nonresident, and not to resident, corporations. City of New Orleans v. Benjamin, 153 U. S. 411, 14 Sup. Ct. 905, was relied upon by the counsel for the city of New Orleans as sustaining his contentions. The exception was overruled by the court.

Charles Louque, for plaintiff.
W. B. Sommerville, for defendant.

PARLANGE, District Judge (after stating the facts as above). In the leading case of Newgass v. City of New Orleans, 33 Fed. 196, Judge Billings—the circuit judge concurring—held that the proper construction of the first section of the act of congress of March 3, 1887, relative to suits brought by assignees of promissory notes and choses in action, is:

"That the circuit court shall have no jurisdiction [of such suits], * * * except over—First, suits upon foreign bills of exchange; second, suits that might have been prosecuted in such court, to recover the said contents, if no assignment or transfer had been made; third, suits upon choses in action payable to bearer and made by a corporation."

So that Judge Billings maintained the jurisdiction as to suits on choses in action payable to bearer, and made by the city of New Orleans; and he denied the jurisdiction as to suits on choses in action made by the city, but requiring assignment (i. e. not payable to bearer). Judge Billings' construction seems to have been adopted, without dissent. Rollins v. Chaffee Co., 34 Fed. 91; Laird v. Assurance Co., 44 Fed. 712; Justice Miller, in Wilson v. Knox Co., 43 Fed. 481; Bank v. Barling, 46 Fed. 357; Searcy Co. v. Thompson, 6 C. C. A. 674, 57 Fed. 1036; Nelson v. Eaton, 13 C. C. A. 523, 66 Fed. 377. City of New Orleans v. Benjamin, 153 U. S. 411, 14 Sup. Ct. 905, was a suit upon warrants payable to the order of certain persons, and upon other warrants which simply stated that the metropolitan police board was indebted to certain persons. See the warrants in 153 U. S. 419, 14 Sup. Ct. 908. While the warrants in the Benjamin Case were choses in action made by a corporation, yet, as they were not payable to bearer, the supreme court held (153 U. S. 433, 14 Sup. Ct. 912) that, to sue upon them, the assignee must bring himself within the above class 2 (i. e. he must allege that his assignor could have sued). As the board of metropolitan police was a Louisiana corporation, the Benjamin Case also virtually disposes of the contention that section 1 of the act of March 3, 1887, applies only to nonresident corporations. The exception to the jurisdiction is overruled.

ALGER v. ANDERSON et al.

(Circuit Court, M. D. Tennessee. March 15, 1899.)

1. EQUITY JURISDICTION OF FEDERAL COURTS—SOURCE—STATE RESTRICTIONS.
Subject to the constitutional and statutory limitations imposed on the chancery jurisdiction of the courts of the United States, and in the absence of a special act of congress, the jurisprudence of the high court of

chancery in England furnishes the chancery law which is exercised by the federal courts, and this law is administered uniformly throughout the several states of the Union, free from restraint of state legislation.

2. SAME—ADEQUATE REMEDY AT LAW.
The adequate remedy at law, which is the test of equitable jurisdiction in the courts of the United States (Judiciary Act 1789, § 16), is that which existed when the judiciary act was adopted, unless subsequently changed by act of congress.

3. SAME—FRAUD—WAIVER—EFFECT.
When a purchaser of real estate, either by election or laches, waives fraud of the vendor as a ground of rescission, he thereby loses also the right to urge the fraud as a ground of any other equitable relief.

4. SAME—RETENTION OF JURISDICTION—RESCISSION—COMPENSATION.
Under the seventh amendment to the constitution, which declares that, in suits at common law, when the value in controversy exceeds $20, the right of trial by jury shall be preserved, and section 16 of the judiciary act of 1789 (Rev. St. § 723), which provides that suits in equity shall not be sustained in the courts of the United States in any case where a plain, adequate, and complete remedy may be had at law, where a contract of sale of real estate has become executed by a deed of conveyance with the usual covenants, and the purchaser files a bill in a circuit court of the United States to rescind on the ground of fraudulent misrepresentations of the vendor concerning his title, and it appears on the hearing that the purchaser has lost his right to rescind by election or laches, compensation for the price of portions of the land to which the vendor's title has failed cannot be decreed as alternative or secondary relief, on the ground that when equity once acquires jurisdiction it will award complete relief.

5. SAME—INTRICATE ISSUES AND COMPLICATED FACTS.
Nor will such relief be granted on the ground that intricate issues, with complicated facts, in suits at law, will be thereby avoided, since the purchaser may institute one suit against the vendor, or his personal representative if he be deceased, and recover on the covenants in the deed for all the land to which there is a failure of title.

6. SAME—VENDOR AND PURCHASER—FAILURE OF TITLE.
Where a purchaser of land has taken a deed with covenant of warranty, and has been let into possession, he cannot, before eviction, in the absence of insolvency of the vendor or fraud on his part, obtain a rescission in equity or resist payment of the price, merely because of defect of title in the vendor.

This is a bill by Russell A. Alger against T. B. Anderson and others. Dismissed without prejudice.

Albert D. Marks, J. J. Lynch, and Floyd Estill, for Russell A. Alger.

Williams & Lancaster, J. B. Branhan, Brown & Spurlock, A. S. Colyar, and W. J. Clift, for Mrs. Keith and the Andersons.

J. J. Vertrees, W. T. Murray, and Mr. Mathews, for John W. Gonce.

CLARK, District Judge. The bill, as originally presented, is one by the vendee against the vendor for rescission, upon the ground of fraudulent misrepresentation. I have concluded, upon the additional proof presented under a petition to rehear, that the plaintiff, with knowledge of the fraud, elected to abide by the transaction, and that with such knowledge he unreasonably delayed instituting suit to rescind, and the case in this aspect is justly subject to the objection of

laches, and upon both grounds the bill, in so far as rescission is concerned, must be dismissed.

An amended bill has been filed, which presents the question of compensation or damages as alternative or secondary relief in the event the primary relief of rescission cannot be had. Under this amended bill, it is sought to recover damages to the extent that there is a deficiency in the quantity of land conveyed by reason of a defect or want of title in the vendor to certain parts of the land actually embraced in the deed. The case presented by the record is really not one of defect of quality or surface deficiency, but of defective title in the vendor; for the deficiency in area comes about, not because the quantity of land called for and embraced within the deed is incorrectly given, but because the title to parts of this land fails by reason of superior conflicting claims, as plaintiff insists. It must be observed that the case is not one of an executory contract, but is one where a contract of sale of real estate has been executed by a deed of conveyance with the usual covenants, including one of warranty. The contention is that if the plaintiff, with knowledge of the fraud, has elected to affirm the transaction, or by laches has defeated his right to rescind, then, the fact of fraud being established, the court may proceed to decree, as secondary relief, compensation against the defendants for the purchase price of that portion of the land to which the vendor did not have valid legal title, and in this way grant complete relief in this suit. In addition to this, it is said that intricate issues, with complicated facts, in suits at law, would be avoided by this form of relief; but as the plaintiff could obviously institute one suit against the personal representative of the deceased vendor, and recover in an action on the covenants in the deed for all the land as to which there is a failure of title, it is not perceived that there is any real ground on which to base this suggestion. There would be only the question of the quantity of land to which there is a failure of title in such a suit. Furthermore, if I am right in the conclusion that the plaintiff has, by election and acquiescence, waived any right to the equitable relief of rescission upon the ground of fraud, it is not believed that it would be consistent to hold that the fraud may, nevertheless, be made the basis of equitable relief in a different form and to a less extent. My opinion is that when the plaintiff has, by affirmative election or laches, waived the fraud as a ground of rescission, he has also thereby lost the right to insist upon such fraud as a ground of any equitable relief at all. The proposition that the fraud, as a ground of one form of relief, is lost, while it may be made the basis of relief in a different form, cannot, in my opinion, be maintained. Fraud, as a ground of equitable relief, when once lost, is lost for all purposes. The objection of fraud, once waived, leaves the contract just as if the fraud had not occurred. McLean v. Clapp, 141 U. S. 429, 12 Sup. Ct. 29, reaffirming Grymes v. Sanders, 93 U. S. 55.

In considering and determining this question of compensation, then, I must treat the case as one from which fraud is eliminated, and determine whether or not relief, by way of compensation or damages, can be granted, and, if so, upon what ground consistently with the established jurisdiction of this court in equity. In dealing with this

question, it must be remarked that the jurisdiction of the circuit courts of the United States as courts of equity is subject to two important limitations. A case, with respect to the rights to be enforced and the remedy desired, must be one of such a character as to come within the recognized boundaries of jurisdiction in equity, as distinguished from jurisdiction at law, and the case must be one also which, by reason of the character of the parties or of the subject-matter of the suit, is one of federal, as distinguished from state, jurisdiction. In this case the court is concerned only with the limitation which marks the boundary of its jurisdiction in equity. In dealing with such a question, it must be borne in mind that chancery jurisdiction is conferred on the courts of the United States under certain limitations, constitutional and statutory, and that, under such limitations, the jurisprudence of the high court of chancery in England, in the absence of a special act of congress, furnishes the chancery law which is exercised by those courts in all of the states. State of Pennsylvania v. Wheeling & B. Bridge Co., 13 How. 518; Litchfield v. Ballou, 114 U. S. 190, 5 Sup. Ct. 820. And this equity jurisdiction conferred on federal courts, being the same as that of the high court of chancery in England, is subject to neither limitation nor restraint by state legislation, and is uniform throughout the different states of the Union. Mississippi Mills v. Cohn, 150 U. S. 202, 14 Sup. Ct. 75; McConihay v. Wright, 121 U. S. 205, 7 Sup. Ct. 940.

Under the provisions of the seventh amendment to the constitution, it is declared that in suits at common law, when the value in controversy exceeds $20, the right of trial by jury shall be preserved; and in section 16 of the original judiciary act of 1789, re-enacted in the Revised Statutes as section 723, it is provided 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." So, too, in relation to the practice of the federal courts, the supreme court of the United States, pursuant to authority conferred by section 719 of the Revised Statutes, among other rules regulating equity practice, promulgated, in 1842, rule 90, which provides that:

"In all cases where the rules prescribed by this court or by the circuit court do not apply, the practice of the circuit court shall be regulated by the present practice of the high court of chancery in England, so far as the same may reasonably be applied consistently with the local circumstances and local conveniences of the district where the court is held, not as positive rules, but as furnishing just analogies to regulate the practice."

Of this rule, Judge Sawyer, in Lewis v. Shainwald, 7 Sawy. 403, 48 Fed. 492, said:

"The jurisdiction of this court is derived from the constitution and laws of the United States, and these rules are simply rules of practice, for regulating the mode of proceeding in the courts. They do not, and could not, properly, either limit or enlarge the jurisdiction of the court. The rule quoted simply regulates the practice in exercising the jurisdiction of the court in those respects wherein the rules adopted do not apply; but the practice of the high court of chancery is to be applied, not as controlling, but simply as furnishing just analogies to regulate the practice."

It will be thus seen that the foundation of equity jurisprudence, as well as of equity practice, in the courts of the United States, lies in

the system of the English court of chancery. But the practice of the English court of chancery adopted by rule 90 affects only matters of procedure, and does not apply in the determination of questions of jurisdiction, which depends upon, and is limited by, the constitution and laws of the United States. Lewis v. Shainwald, 48 Fed. 492.

But the question of jurisdiction is here to be considered and decided, and this must be determined by the essential character of the case. Van Norden v. Morton, 99 U. S. 378. And the right asserted, as well as the relief sought, must be equitable (Smith v. Bourbon Co., 127 U. S. 105, 8 Sup. Ct. 1043); for it is this which distinguishes the suit in equity from one at common law.

In State of Pennsylvania v. Wheeling & B. Bridge Co., 18 How. 462, Mr. Justice Nelson, delivering the opinion of the court, said:

"Original jurisdiction in equity, in a particular class of cases, conferred by the constitution on this court, has been interpreted to impose the duty to adjudicate according to such rules and principles as governed the action of the court of chancery in England, which administered equity at the time of the emigration of our ancestors and down to the period when our constitution was formed."

See, also, Fontain v. Ravenel, 17 How. 384.

And in McConihay v. Wright, 121 U. S. 206, 7 Sup. Ct. 942, Mr. Justice Matthews said:

"The adequate remedy at law, which is the test of equitable jurisdiction in these courts, is that which existed when the judiciary act of 1789 was adopted, unless subsequently changed by act of congress."

See, also, Scott v. Neely, 140 U. S. 106, 11 Sup. Ct. 712, and Mississippi Mills v. Cohn, 150 U. S. 202, 14 Sup. Ct. 75.

Both forms of statement of the rule are correct. The court in the former cases was discussing the question as affected by the seventh amendment of the constitution, securing the right of trial by jury in suits at common law, while in the latter cases the restrictive effect of the provision contained in the sixteenth section of the judiciary act was being considered. The judiciary act was adopted or passed September 24, 1789, while the same congress, five days later, proposed the article subsequently ratified as the seventh amendment of the constitution, making them contemporaneous, as was remarked by Mr. Justice Story in Parsons v. Bedford, 3 Pet. 446. See, also, Grether v. Cornell's Ex'rs, 43 U. S. App. 782, 23 C. C. A. 498, and 75 Fed. 742; Klever v. Seawell, 22 U. S. App. 719, 12 C. C. A. 661, and 65 Fed. 393. The cases all agree that the power of the courts of chancery of the United States, under the constitution and the judiciary act, must be regulated by the law of the English chancery in administering the remedy for an existing right. Any special act of congress upon the subject, or any enlargement of equitable rights by state statute (as distinguished from an extension of the equitable remedy), enforceable in the equity courts of the United States, is put out of view now, as not affecting the matter under consideration. Jurisdiction in equity of the federal courts being subject to limitations substantially the same as that of the English courts of chancery, as understood and construed at the time of the adoption of the constitution and judiciary act of 1789, it will aid in the solution of the question to examine