

certainly presents no stronger case for the exercise of equity jurisdiction than *Buzard v. Houston*, 119 U. S. 347, 7 Sup. Ct. Rep. 249, where it was sought to have a contract rescinded on the ground of fraud, and the supreme court denied the jurisdiction, under section 723, Rev. St., cited. The bill would not avoid a multiplicity of suits. Indeed one suit at law with different counts against each company might settle the whole matter. Should complainant maintain the bill, it would be sued upon the several policies and the loss would have to be readjusted in a suit upon each of the policies. If it should fail to maintain its bill, it would still be liable to the several suits on the adjustment. The bill is in no sense a bill of discovery. The suit is against a corporation, and there can be no discovery by a corporation unless its officers or agents, who know the facts, are made parties. Corporations do not answer upon oath, but under the corporate seal. The corporation is a non-sentient being, and, except through its officers and agents, has no knowledge. Besides, an answer upon oath is expressly waived in the bill. So also there is no need of a discovery, as the testimony can be much more effectively obtained by examining all the parties having knowledge as witnesses. They are now all competent witnesses. In view of the statute cited, I see no ground for maintaining a bill in equity in this case. Let the demurrers in the several cases be sustained and the bills dismissed.

NELLIS v. PENNOCK MANUF'G Co.¹

(Circuit Court, E. D. Pennsylvania. February 13, 1889.)

1. EQUITY—PRACTICE—AMENDMENT OF PLEADING.

The court has power to permit an amendment, by the addition of a claim inadvertently omitted, although not strictly within the rules, where its rejection would result in no advantage to either party; subject, however, to any defense which might have been presented if the claim had been originally placed in the bill.

2. SAME—COSTS.

Costs resulting from such omission will be placed upon plaintiff.

In Equity.

Motion to amend bill in equity. Plaintiff moved to amend the bill after the filing of the master's report by introducing into it a claim for damages and profits made during the time prior to the assignment of the patent to him, which included all rights to past damages.

Francis T. Chambers, for complainant.

Jos. C. Fraley, for defendant.

BUTLER, J. I have no doubt of the power to allow the proposed amendment to the bill. Such an amendment is not contemplated by

¹Reported by C. Berkeley Taylor, Esq., of the Philadelphia bar.

the rules prescribed by the court, governing amendments generally. *Tremaine v. Hitchcock*, 23 Wall. 518; *Neale v. Neales*, 9 Wall. 1; Mitf. Eq. Pl. 326, 331; Story, Eq. Pl. §§ 904, 905; Daniell, Ch. Pr. 463, 466; *McArtee v. Engart*, 13 Ill. 242. It is quite clear that the claim covered by the amendment might have been joined originally in the claim embraced in the bill. *Henry v. Soapstone Co.*, 2 Ban. & A. 221; *Packer Co. v. Eaton*, 12 Fed. Rep. 865; *Spring v. Sewing-Machine Co.*, 13 Fed. Rep. 446; *Grim's Appeal*, 105 Pa. St. 375; *Hoyt v. Spraug*, 12 Chi. Leg. N. 25; *Sage v. Woodin*, 66 N. Y. 578; *Kimball v. Lincoln*, 99 Ill. 578, 5 Bradw. 316; *Brooks v. Brooks*, 12 Heisk. 12; *Mead v. Raymond*, 52 Mich. 14, 17 N. W. Rep. 221. The claim was omitted by oversight. The evidence, however, on which it rests has been mainly taken. If the amendment was not allowed, the parties would be subjected to delay and expense, with no possible advantages to either of them. It will therefore be allowed, subject to any defense which defendant might have presented if the claim had been embraced in the bill when filed. If additional costs result from the omission so to embrace it, they will be placed on the plaintiff.

JONES v. SMITH et al.

(Circuit Court, E. D. New York. March 6, 1889.)

BANKRUPTCY—ASSIGNEE—FRAUDULENT CONVEYANCES—LIMITATION OF ACTIONS.

Complainant was appointed assignee in bankruptcy in 1879, and brought this suit in 1886, to set aside as fraudulent certain conveyances made by the bankrupt. In 1875 certain creditors had brought an action (and filed a *lis pendens*) to set aside the same conveyances, on the ground that they were fraudulent and without consideration. *Held*, that the six-years statute of limitation of suits to procure a judgment on the ground of fraud (Code Civil Proc. N. Y. § 382, subd. 5) began to run as against complainant—whose right is only as the representative of creditors—from the commencement of the creditors' action.

In Equity. Bill to set aside conveyances. On final hearing.

B. G. Hitchings, for complainant, cited to the point decided:

Bradshaw v. Klein, 1 N. B. R. 542; *Cragin v. Carmichael*, 11 N. B. R. 511; *Freelander v. Holloman*, 9 N. B. R. 331; *Bailey v. Glover*, 21 Wall. 342; *Rosenthal v. Walker*, 111 U. S. 185, 4 Sup. Ct. Rep. 382; *Cook v. Sherman*, 20 Fed. Rep. 171; *Adams v. Stern*, 29 Hun, 280.

F. R. Coudert and *James R. Angel*, for defendants, cited to the point decided:

U. S. v. Beebee, 17 Fed. Rep. 37; *Maxwell v. Kennedy*, 8 How. 221; *Burke v. Smith*, 16 Wall. 401; Wait, Fraud. Conv. §§ 287, 292, 293; *Aldridge v. Muirhead*, 101 U. S. 402.

LACOMBE, J. This is a suit brought by the assignee in bankruptcy of David M. Smith, to set aside the conveyances by him of three separate parcels of real estate to the several defendants. The conveyances are