

## HITCHINS &amp; a. v. PETTINGILL &amp; a.

When, in a deed, a part of the land bargained and paid for is omitted, by the fraud of the grantor, he may be compelled to convey it to the grantee, although the grantee, by the exercise of ordinary care, would have discovered the error when the deed was made.

BILL IN EQUITY, for the reformation of a deed. The court found that the plaintiffs bought a farm of the defendants, and paid for it; that a part of the farm containing ten acres, included in the bargain and paid for, was, by the fraud of the defendants, not included in the deed; and that the plaintiffs, by the exercise of ordinary care, would have discovered the fraud when the deed was made. The question, whether the plaintiffs are entitled to relief, was transferred by the circuit court.

*Wiggin*, for the plaintiffs.

*Bartlett*, for the defendants.

SAWYER, J. If the ten acres had been omitted in the deed by a mutual mistake, the plaintiffs would have been entitled to relief, notwithstanding their failure to exercise ordinary care in examining the deed and ascertaining whether the contract was accurately put in writing. The rule *caveat emptor* applies to the making of the contract of purchase, the negotiations, the agreement, the inducements upon which the purchaser acts, the grounds on which the minds of the parties meet, but not to the formal, clerical process of giving the purchaser written evidence of the completed bargain. *Monroe v. Skelton*, 36 Ind. 302.

On the facts stated, the plaintiffs are entitled to a decree requiring the defendants to give them a deed of the ten acres.

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WEBSTER v. WEBSTER.

By the law of Massachusetts, a woman, having a husband living from whom she is not divorced, is incapable of contracting a second valid marriage.

IN EQUITY. The question is, whether the plaintiff is the widow of Thomas Webster. In 1833, she married one Farnsworth, with whom she lived in Massachusetts until 1847, when he deserted her. He died in 1872. She has not seen him since 1848, and more than twenty years ago she heard he was dead. In 1855, she married

Thomas Webster, in Massachusetts, and afterwards lived with him in this state until 1872, when she left him. He died in 1873.

*C. U. Bell* and *Hatch*, for the plaintiff.

*Bartlett* and *Frink*, for the defendant.

SAWYER, J. The plaintiff was incapable of contracting a valid marriage with Webster in 1855, because she then had a husband living from whom she was not divorced. Mass. Rev. St., c. 75, s. 4 (Gen. St., c. 106, s. 4); c. 76, s. 1 (Gen. St., c. 107, s. 1). The exemption from the criminal punishment of polygamy in certain cases (Mass. Rev. St., c. 130, ss. 2, 3; Gen. St., c. 165, ss. 4, 5) does not render the second marriage valid. *Kenley v. Kenley*, 2 Yeates 207; *Fenton v. Reed*, 4 Johns. 52; *Williamson v. Parisien*, 1 Johns. Ch. 389; *Glass v. Glass*, 114 Mass. 563; 2 Kent Com. 79. It is not necessary to consider whether *Hiram v. Pierce*, 45 Me. 367, gives the true construction of that provision of the Massachusetts statutes, by which, under some circumstances, the issue of the second marriage is "deemed to be the legitimate issue of the parent capable of contracting the marriage." The plaintiff is not the widow of Webster.

*Case discharged.*

FOSTER, J., did not sit.

BREWSTER & a., Ex'rs, v. PAGE, Adm'r.

A bill in equity does not lie to set aside an agreed case on grounds on which there is a plain and adequate remedy at law by motion to discharge the case.

BILL IN EQUITY, to set aside the agreed case in *Brewster v. Brewster*, 52 N. H. 52, for fraud, accident, and mistake. In the circuit court, January term, 1876, the bill was dismissed, and the plaintiffs excepted.

*W. H. Y. Hackett* and *Frink*, for the plaintiffs.

*Hatch* and *Page*, for the defendant.

SAWYER, J. The bill was properly dismissed, because, if the plaintiffs were entitled to relief, they had a suitable remedy at law on a motion for a discharge of the agreed case (*Bellows v. Stone*, 14 N. H. 175, 203; *Lyme v. Allen*, 51 N. H. 242); and in *Page v. Brewster*, 54 N. H. 184, 188, their motion for a discharge was denied.

*Exceptions overruled.*

FOSTER, J., did not sit.