

**Betts Vs. Lewis**

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**SooperKanoon Citation :** [sooperkanoon.com/80652](http://sooperkanoon.com/80652)

**Court :** US Supreme Court

**Decided On :** 1856

**Appeal No. :** 60 U.S. 72

**Appellant :** Betts

**Respondent :** Lewis

**Judgement :**

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**60 U.S. 72**

*APPEAL FROM THE DISTRICT COURT OF THE UNITED*

*STATES FOR THE NORTHERN DISTRICT OF ALABAMA*

## **SYLLABUS**

According to the practice prescribed for the circuit courts by this Court in equity causes, a bill cannot be dismissed on motion of the respondents for want of equity after answer and before the hearing.

This was a bill filed by Betts against Lewis and wife under the same circumstances which gave rise to the case of [Lewis v. Darling](#), reported in 16 How. 1. It will be seen by a reference to that case, page [57 U. S.](#) that Burr H. Betts was one of the legatees in the will of Samuel Betts.

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It is not material in the present report to state the nature of the case.

MR. JUSTICE CURTIS delivered the opinion of the Court.

This is an appeal from the decree of the District Court of the United States for the Northern District of Alabama, having the powers of a circuit court. The appellant filed his bill in that court to charge a legacy on property alleged to have come to the hands of the respondents, and to be chargeable with its payment. After answers had been filed, and while exceptions to one of the answers were pending, the respondents moved to dismiss the bill for want of equity, and the court ordered it to be dismissed. This was irregular, and the decree must be reversed. It is understood to be in conformity with the practice of the state courts of Alabama to entertain such a motion at any stage of the proceedings. But the equity practice of the courts of the United States is governed by the rules prescribed by this Court, under the authority conferred upon it by the act of Congress, [McDonald v. Smalley](#), 1 Pet. 620, and is the same in all the states. And this practice does not sanction the dismissal of the bill on a motion made while the parties are perfecting the pleadings. The question whether the bill contains any equity may be raised by a demurrer. If the defendant answer, this question cannot be raised until the hearing. *Non constat* that a defect may not be removed before the hearing.

The case must be remanded to the circuit court, and if any defects exist in the bill capable of being cured by amendments, as no replication has been filed, it is within the rules of ordinary practice to allow them to be made.