

aliene to a bill of foreclosure by the mortgagee would have been a full and complete defence.

If a defendant, having the means of defence in his power in an action against him at law, omits to use them and suffers a recovery against him, he is precluded from asking relief in chancery in relation to the same matter.

In equity as at law, parties are required to use due and reasonable diligence, and they will not be permitted to unsay at a future time what they have not only once said, but sworn to.

Upon a supplemental bill, in the nature of a bill of review, the question always is, not what the plaintiff knew, but what, using due diligence, he might have known.

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[The bill in this case was filed on the 1st of January, 1848, and its allegations, together with those of the answer, and all the proceedings and facts in the case are sufficiently stated in the opinion of the Chancellor.]

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THE CHANCELLOR :

This bill cannot be supported either as a bill of review for error apparent on the face of the decree sought to be affected by it, or upon the ground of new facts, or facts discovered since the decree, and which could not, with reasonable diligence, have been used at the time when the decree passed. There is no pretence of error apparent upon the face of the decree nor of discovery of facts since its date which could not have been used by way of defence at that time. And even if these objections could be surmounted and a bill of review would lie for new facts or newly discovered facts without asking the previous consent of the court, a fatal difficulty would still exist in the fact that the present bill was filed seven years after the date of the decree sought to be revised, without any allegation or suggestion even that the new or subsequently discovered facts came to the knowledge of the complainant within the period of nine months prior to the exhibition of his bill. On the contrary, nothing appears upon the face of this bill to show that every ground relied upon was not fully known to the complainant when the decree of January, 1841, was passed.

The case of *Burch et al vs. Scott*, 1 *G. and J.*, 393, and *Berrett vs. Oliver*, 7 *G. and J.*, 192, are conclusive to show that