

Case No. 18,137.

YERRINGTON v. PUTNAM.

[2 Ban. & A. 601.]<sup>1</sup>

Circuit Court, D. New Jersey.

April, 1877.

BILL OF REVIEW—RULE TO SHOW CAUSE.

Where a bill of review is filed to set aside a decree of the court, made in a suit between the parties, the court will grant a rule to show cause why the former decree should not be reversed, and the injunction granted should not be suspended, only: (1) When the original decree shows upon its face that it is contrary to law; or (2) upon the allegation and prima facie proof of the existence of material facts, which, if known, would have hindered the decree, and which the complainant in the bill of review did not know at the former trial, and could not have discovered by the exercise of reasonable diligence.

[Bill of review by Henry A. Yerrington against Henry W. Putnam.]

T. C. Nye, for complainant.

P. E. Havens, for defendant.

NIXON, District Judge. The bill is filed in this case to set aside a decree of this court, heretofore made in a suit between the parties. The defendant being in court, an application is now made for a rule to show cause why the former decree should not be reversed, and the injunction granted should not be suspended until the further order of the court.

There are two grounds only on which the court will grant a rule in such cases: (1) When the original decree shows upon its face that it is contrary to law; (2) upon the allegation and prima facie proof of the existence of material facts which, if known, would have hindered the decree, and which the complainant in the bill of review did not know at the former trial, and could not have discovered by the exercise of reasonable diligence.

I have examined the bill, and do not find any reason therein alleged, which would authorize the court to grant the rule asked for.

<sup>1</sup> [Reported by Hubert A. Banning, Esq., and Henry Arden, Esq., and here reprinted by permission.]