

further prosecution of his ejectment suit against the complainants, and from suing out final process for the enforcement of a judgment for rent obtained therein; and upon the same day complainants were granted leave to file a supplemental bill "setting up the result of the cause of Lucy C. Freeman against them for arrearages of rent, and such facts in connection therewith as they may desire, and praying such relief touching the same as they may be advised."

The supplemental bill filed alleged as follows.

"(1) After, notwithstanding the filing of the bill in this cause, the defendant L. C. Freeman prosecuted her suit in this court against your orators for arrearages in rent upon and for her dower interest in the Content plantation, as shown in the pleadings, and on the 12th day of June, 1884, A. D., after her demurrer and exception to your orators' original bill had been sustained, recovered a final decree against your orator Pattie A. Clay for three thousand and ninety-two and thirty-four one-hundredths dollars, and costs. On the 14th day of June, 1884, on motion, this judgment or decree was reduced to two thousand two hundred and fifteen one-hundredths dollars, the same, with the costs in the cause, one hundred and sixty-two dollars, your orators well and truly paid, and so performed the said payment and decree of the said district court, from which there was no appeal, as, by the record of said cause, doth appear. (2) That said recovery and payment was not according to right and justice, as appears from the opinion of the supreme court of the United States on your orators' appeal to the above decree of this court in this cause, and the said Lucy C. Freeman ought in this cause to be decreed and adjudged to restore the said sum and costs to your orators, or be compelled to accept it as a charge against her in any accounting hereafter to be had in the cause. The premises considered, your orators pray as prayed in the original bill, and that the said Lucy C. Freeman be adjudged to restore to them the money so wrongfully secured by her in the said cause, and for general relief."

Mrs. Lucy C. Freeman thereafter filed her answer to the original bill, and as to the supplemental bill she answered as follows:

"As to said supplemental bill she says that on the 30th day of September, 1880, your respondent filed against the complainant her original bill of complaint in the chancery court of Bolivar county, Miss., demanding of complainant rents for the dower of respondent in lands of her former husband, David L. Field, deceased, and which complainant had wrongfully withheld from her. Said cause was removed to this court, and on the 10th day of August, 1882, the complainant filed against respondent this, her original bill in this cause, under which respondent was enjoined from prosecuting her suit aforesaid. That afterwards, on the 6th day of March, 1884, after demurrer to the original bill herein, said demurrer having been sustained by this court, said injunction was dissolved, and the bill dismissed. In making said decrees of dissolution and dismissal, the court offered to retain the bill for the purpose of stating the account between the complainant and respondent; yet complainant, well knowing that she could appeal this cause to the supreme court of the United States, and could not appeal the other if it should result in a decree for less than \$5,000.00, deliberately elected not to have said bill so retained, and thereby consented to its dismissal in so far as this account is concerned. Thereupon your respondent proceeded with her cause, as she had a right to do, and said cause resulted, on the 16th day of June, 1884, as is stated in said supplemental bill, in a decree in favor of your respondent against the complainant for the sum of \$2,215.00, not the sum of \$2,200.15 dollars, as

wrongfully stated therein. This sum of \$2,215.00, and the costs, as stated, the complainant (that is to say, the respondent in that cause) voluntarily paid to this respondent, without legal process, on the —— day of July, 1884; so that your respondent says that the said decree is in full force and effect, unappealed from, unreversed, without any bill of review or petition for rehearing, except that it was voluntarily paid in full, and settled. The matter is *res adjudicata*, and cannot be reopened, and this court will not do obliquely for the complainant what it could not do directly. It would be to affect respondent, and hold her chargeable, even to the extent of setting aside and annulling after two years a solemn and final decree of this court, merely on the ground of error, by an appeal to which she was no party, since the complainant by her course aforesaid induced her to believe that the whole matter was settled and finished, so far as she was concerned. And respondent submits, as a matter of law, whether a matter purely personal to herself and the complainant can be introduced into the accounting of the partnership matters between C. I. Field and D. I. Field, and on this point prays that this answer be taken as a demurrer to the said supplemental bill."

On the 19th of November, 1886, it was ordered that—

"This cause be set down for hearing on the plea of Lucy C. Freeman to the supplemental bill of complaint filed October 4, 1886, as to its sufficiency in law."

Afterwards, on the 11th of January, 1888, the following agreement of record was made:

"In this cause the complainant, having set the 'answer' of Lucy C. Freeman to the supplemental bill down for sufficiency on the idea that it was a plea, it is now agreed, to avoid delay, that the said answer may be taken as such, and considered as if excepted to, and the exceptions of complainant thereto and the demurrer filed to the said supplemental bill be considered and determined by the court, and, if said exceptions and demurrer be overruled, that the cause may be disposed of finally, the complainant being allowed to file exceptions to said answer *nunc pro tunc*. It is further agreed that, if said demurrer be sustained, the proper order may be made dismissing the said supplemental bill, with or without prejudice, as the court may determine."

A great deal of testimony was taken and filed in said cause; and on the 1st day of June, 1888, an order of reference was made in said cause in and by which an account was directed of the partnership affairs aforesaid, and certain directions, not necessary to set forth here, given to the master. Said order, among other things, provides that—

"All other matters arising in the cause as to the claim of the complainant against the defendant Lucy C. Freeman, growing out of the payment to her by the complainant of the amount of a decree heretofore rendered in her favor by this court, and the disposition to be made of the rental accruing on the dower interest of the said Lucy C. Freeman since her occupation of said plantation, and otherwise arising in the cause, are reserved to the final hearing; but in taking the account the commissioner will ascertain and report to the court the rental value of the dower in the said plantation occupied by the said Lucy C. Freeman from the time she was let into possession, and the arrearages of rental asserted by her, and for which a recovery was heretofore had; and in making his report to the court he will ascertain the amount of rent duly chargeable against the complainant for the use of the entire plantation, as well as the amount due on account of the rental value of the dower allotted to the said Lucy C. Freeman, to the end that the court, by a proper decree in the premises, may dispose of the whole controversy," etc.

And afterwards, on the 1st day of August, 1889, the master's report was filed. In and by said report it appeared that there was due to the said firm of D. I. Field & Co., by Christopher I. Field, on the 1st day of January, 1880, after satisfying all demands of said Christopher against said firm, the sum of \$2,396.26, and on the 1st of January, 1889, exclusive of the dower interest of Mrs. Freeman, the sum of \$11,771.94; that three fifths of the last-named sum was the property of the said Pattie A. Clay as the heir at law of said Christopher; and that the said Christopher was entitled to allowance, as against said balance, of three or four small items of disbursement for the benefit of David's estate, not necessary to set forth here, with interest thereon. On such basis, the master then stated the account between Mrs. Lucy C. Freeman and Pattie A. Clay, representative of C. I. Field, as follows:

1889.	Mrs. Lucy C. Freeman in account with C. I. Field.	Dr.	Cr.
Jan 1.	To money paid her in 1861.....	\$ 200 00	
	To interest on same at 6%, 25 years.....	800 00	
	To dower collected in 1884.....	2,387 58	
	To interest on dower 6 years at 6%.....	859 53	
	By balance due C. I. Field.....		\$3,747 11

Certain objections were made to said report, among others that the master had failed to credit Mrs. Freeman with her one-sixth part of the said sum of \$2,396.26; found to be due on the 1st day of January, 1880, as aforesaid; and this objection was allowed by the court. Whereupon said account was so far modified as to reduce the same by said allowance, together with some others not material here, to the sum total of \$2,667.28. Thereupon the court, on the 15th day of August, 1889, rendered a final decree in said cause, in and by which, among other things, it was ordered and adjudged that the complainant, Pattie A. Clay, recover of Mrs. Lucy C. Freeman the said sum of \$2,667.28, with interest thereon from the 1st day of January, 1889, at the rate of 6 per cent. per annum, for which execution may issue to be levied; and part of the costs of said cause were also adjudged against Mrs. Freeman. From the said decree of 15th of August, 1889, all of the parties prayed an appeal to the supreme court of the United States; but that tribunal, on the 2d day of March, 1891, (11 Sup. Ct. Rep. 419,) dismissed the appeal of Lucy C. Freeman on the ground that the amount in controversy was not sufficiently large to give that court jurisdiction.

The bill of review brings the entire record of the cause before the court, and prays that on the final hearing the court will order and adjudge that the decrees herein rendered against Mrs. Freeman on the 15th day of August, 1889, be credited with the said amount of \$2,387.58, with interest thereon at 6 per cent. per annum from the date from which the master computed interest on the same in said account, being the amount improperly and erroneously charged against her, since it was paid to her under said decree of 14th June, 1884, and cannot be recovered in this collateral and indirect manner. A demurrer was filed to the said bill of review, and for causes of demurrer are assigned the following:

"(1) There is no equity on the face of the bill. (2) There is not shown to be any error in the record of, and proceedings had in, the principal case. (3) The complainants have not performed or tendered performance of the decree complained of. (4) And for other causes to be assigned at the hearing."

The court below sustained the said demurrer, and dismissed the said bill of review, whereupon the complainants prosecute this appeal.

Edward Mayes and *Frank Johnston*, for appellants.

William L. Nugent, for appellees.

Before PARDEE and McCORMICK, Circuit Judges, and LOCKE, District Judge.

PARDEE, Circuit Judge, (*after stating the facts.*) The bill of review in this case is brought for alleged error of law appearing on the face of the decree. To sustain the bill—

"The decree complained of must be contrary to some statutory enactment, or some principle or rule of law or equity recognized or acknowledged, or settled by decision, or be at variance with the forms or practice of the court; but the bill cannot be maintained where the error is in mere matter of form, or the propriety of the decree is questioned." Daniell, Ch. Pr. § 1576.

"In regard to errors of law apparent upon the face of the decree, the established doctrine is that you cannot look into the evidence of the case in order to show the decree to be erroneous in its statement of the facts. But taking the facts to be as they are stated to be on the face of the decree, you must show that the court has erred in point of law. * * * In the courts of the United States the decree usually contains a mere reference to the antecedent proceedings without embodying them. But for the purpose of examining all errors of law, the bill, answers, and other proceedings are, in our practice, as much a part of the record before the court as the decree itself; for it is only by a comparison with the former that the correctness of the latter can be ascertained." Story, Eq. Pl. 407.

These propositions are well settled. *Whiting v. Bank*, 13 Pet. 6; *Putnam v. Day*, 22 Wall. 60; *Buffington v. Harvey*, 95 U. S. 99; *Thompson v. Maxwell*, Id. 397; *Beard v. Burts*, Id. 434; *Shelton v. Van Kleeck*, 106 U. S. 532, 1 Sup. Ct. Rep. 491; *Bridge Co. v. Hatch*, 125 U. S. 7, 8 Sup. Ct. Rep. 811.

In the present case the error alleged as apparent upon the face of the decree in the principal suit is the failure of the court to give due effect to an alleged plea of *res adjudicata* contained in the answer of Mrs. Freeman to the supplemental bill. Said answer also contained a demurrer to the supplemental bill on the ground that the collection by Mrs. Freeman from the complainant of rents of her dower estate was a matter purely personal to herself and the complainant, and could not be introduced into an accounting of the partnership matters between C. I. Field and D. I. Field. The answer of Mrs. Freeman was treated by the complainants as a plea, and was duly set down for sufficiency. About 18 months thereafter, as appears by the record, counsel, to avoid delay, agreed that the said answer was to be taken as such, and considered as if excepted to; the agreement providing that if the exceptions of complainant thereto and the demurrer filed to the supplemental bill should be overruled, the case might be disposed of finally, complainants being allowed to file exceptions to