to show, however, that the petition for removal was ever called to the attention of that court, or to the attention of the judge thereof, either on the day when an answer was due, or afterwards, or that said court or judge was ever asked to make any order with reference to the petition for removal. The record further shows that, long afterwards, to wit, on September 30, 1892, the defendant Mather made and filed in the state court a motion to dismiss the case as to him, and that said motion was argued and submitted, and eventually overruled. In view of these facts, appearing upon the face of the record, counsel for the appellant have insisted that the petitioner waived his right of removal, if such right ever in fact existed; and the judgment of this court is invoked on the latter point. But, inasmuch as we are satisfied, for the reasons already stated, that the case was not subject to removal, it is unnecessary to express an opinion with reference to the latter question. The decree of the circuit court dismissing the bill is vacated and annulled, and the case is remanded to the circuit court, with directions to remand it to the district court of Buffalo county, state of Nebraska.

CONDON v. CENTRAL LOAN & TRUST CO.

(Circuit Court of Appeals, Eighth Circuit. March 23, 1896.)

No. 695.

APPEAL—TIME OF TAKING.

An appeal to the circuit court of appeals, not taken within six months, as required by the act establishing that court (26 Stat. 829, c. 517, § 11), must be dismissed.

Appeal from the Circuit Court of the United States for the District of Nebraska.

F. B. Tiffany, for appellant.
Curtis L. Day, for appellee.

Before CALDWELL, SANBORN, and THAYER, Circuit Judges.

CALDWELL, Circuit Judge. This was a suit in equity, to foreclose a mortgage on real estate, begun in the United States circuit court for the district of Nebraska by the Central Loan & Trust Company, the appellee, against Frank C. Condon, the appellant, and others. A decree pro confesso was entered on the 4th day of September, 1893; a motion, filed on the 28th day of November, 1893, to set aside and vacate the decree pro confesso, was overruled on the 9th day of January, 1894; and on the 29th day of January, 1894, a final decree of foreclosure was entered. On the 26th day of February, 1894, a motion was filed "to set aside the default and decree," which was denied on the 27th of April, 1894. This appeal was taken more than 15 months after the rendition of the final decree, and more than 12 months after the motion to set aside the decree was overruled. The appeal, not having been taken within 6 months, as required by the act establishing this court (26 Stat. 829, c. 517, § 11), must be dismissed, and it is so ordered.

In re GAMEWELL FIRE-ALARM TEL. CO. et al.

(Circuit Court of Appeals, First Circuit. April 23, 1896.)

No. 180.

1. APPEAL—EFFECT OF DECISION AND MANDATE—SUPPLEMENTAL PROCEEDINGS BELOW.
   A decision by a federal appellate court finally settles as the law of the case everything which was before the court and was disposed of by it, so that after it the court below has no power to entertain a supplemental bill in the nature of a bill of review, based on newly-discovered evidence, unless such right is reserved, or permission given in the mandate.
2. SAME—PETITION TO APPELLATE COURT AFTER MANDATE.
   A federal appellate court may ordinarily entertain an original petition for leave to file, in the court below, a bill of review, or a supplemental bill in the nature thereof, even when the application is made after the rendition of judgment by the appellate court, after the going down of the mandate, and after the close of the term at which the judgment was entered.
3. SAME—QUESTIONS FOR DECISION.
   Upon the filing of such a petition two questions ordinarily arise: First, that of the materiality of the alleged new matter; and, second, that of laches. The question of materiality is mainly and ordinarily for decision by the appellate court; but the question of laches should ordinarily be left to the court below, which is apt to be more fully acquainted with the facts bearing on that question. In case the petition is granted, therefore, the usual order will be that the petitioner have permission to apply to the court below for leave to file further pleadings.
4. SAME—REHEARINGS IN PATENT CASES — NEWLY-DISCOVERED ANTICIPATORY MATTER.
   Applications for rehearings in patent cases, based on alleged newly-discovered anticipatory publications should not be made the basis for new proceedings, unless strict rules are satisfied.

Petition by the Gamewell Fire-Alarm Telegraph Company and others for leave to file in the circuit court a supplemental bill in the nature of a bill of review.

This was a suit in equity by the Municipal Signal Company against the Gamewell Fire-Alarm Telegraph Company and others for alleged infringement of letters patent Nos. 359,687 and 359,688, granted March 22, 1887, to B. J. Noyes, for improvements in municipal signal apparatus. The suit was commenced in June, 1888, and in August, 1892, after a hearing on the pleadings and proofs, an interlocutory decree for an injunction and account was entered by the circuit court. 52 Fed. 464. From this decree defendants appealed to this court, which, on April 11, 1894, affirmed the same. 10 C. C. A. 184, 61 Fed. 949. After the going down of the mandate, the complainant took no steps to have an accounting, and nothing has been done in that regard to the present time. On June 12, 1895, defendants filed in the circuit court a petition for a rehearing, and for leave to file a supplemental bill in the nature of a bill of review, based on alleged newly-discovered evidence. On February 5, 1896, this petition was denied, Colt, Circuit Judge, delivering the following opinion:

"No right having been reserved in this case in the mandate of the circuit court of appeals, and no permission having been given upon application to that court for leave to file a supplemental bill in the nature of a bill of review, the defendants' petition must be dismissed. Southard v. Russell, 16 How. 547, 570; Kingsbury v. Buckner, 134 U. S. 650, 671, 10 Sup. Ct. 638; Bank v. Taylor, 4 C. C. A. 55, 53 Fed. 854, 866; Durant v. Essex Co., 101 U. S. 555; Watson v. Stevens, 3 C. C. A. 411, 53 Fed. 31, 34. The rule laid down in the above cases applies to interlocutory as well as to strictly final decrees, but does not apply to interlocutory orders for preliminary injunctions, which