opinion that defendant was negligent in delivering the wheat to A. F. Smith & Co., it is responsible to plaintiff for the amount of the unpaid drafts, less any sum not actually recovered from others."

Here the plaintiff recovered nothing of Thompson, and there is nothing to be deducted.

Some suggestion is made that this was received as a charitable bequest, and so applied that it had gone beyond reach, and cannot be recovered. But the defendant has not shown that this particular money has been applied to any particular purpose as coming from Saul, or otherwise than as it would use its general funds in furtherance of its objects, nor that any of this particular money was applied to any of its purposes. As the defendant retained the money after notice that it was the plaintiff's, and claimed by him, interest upon it follows from that time. Decree for plaintiff for $10,028.82, with interest.

JOUROLMAN et al. v. EAST TENNESSEE LAND CO. et al.

(Circuit Court of Appeals, Sixth Circuit. February 8, 1898.)

No. 381.

APPEAL—MODIFICATION OF DECREE AFTER TERM.

An appellate court has no power, after the end of the term at which its decree is rendered, to modify the same on motion, in respect to the costs.

In Error to the Circuit Court of the United States for the Eastern District of Tennessee.

On motion for an order to correct the decree and mandate.

Leon Jourolman, for the motion.

Before TAFT and LURTON, Circuit Judges, and SEVERENS, District Judge.

SEVERENS, District Judge. In this case the final decree of this court, reversing that of the court below, was entered May 10, 1897. 26 C. C. A. 23, 80 Fed. 604. The petition for rehearing was denied July 6, 1897. The decree at the circuit was entered on the mandate on August 2d following. By the decree of this court the reversal was in terms with costs, without more, and this was the form of the mandate. This left the question of the costs in the court below subject to the power of that court. Costs were not here decreed to the complainants. Motion is now made in this court for an order modifying the decree and mandate so as to award the costs in the court below to the complainants. The motion must be denied. The term at which the decree here was entered had expired before the entry of this motion, and the control of the court over it had terminated. If the complainants conceived that the decree was not such as they were entitled to, it was their privilege to make seasonable application for such modification as would remedy the supposed defect. Not having availed themselves of this right, and having suffered the term to lapse, they have now no standing for the present application.

UNITED STATES v. COAL DEALERS' ASS'N OF CALIFORNIA et al.

(Circuit Court, N. D. California. January 28, 1898.)

No. 12,539.

1. MONOPOLIES—ANTI-TRUST LAW—RESTRAINING ORDER.
Under section 4 of the anti-trust law of July 2, 1890, a restraining order may be issued without notice, under the circumstances sanctioned by the established usages of equity practice in other cases.

2. PARTIES IN EQUITY—UNINCORPORATED ASSOCIATION.
In a suit in equity to restrain an alleged unlawful combination acting as an unincorporated association, it is sufficient that the association, together with a large number of its members, as individuals and officers of the association, are made parties defendant.

3. MONOPOLIES—COMBINATIONS IN RESTRAINT OF TRADE—ANTI-TRUST LAW.
Under the anti-trust law of July 2, 1890, a contract or combination which imposes any restraints whatever upon interstate commerce is unlawful; and it is immaterial whether or not the restraint is a fair and reasonable one, or whether it has actually resulted in increasing the price of the commodity dealt in.

4. SAME—INTERSTATE COMMERCE.
Where coal is brought from other states and foreign countries to a certain city by importers and dealers, who, by a combination with a local coal dealers' association, regulate the retail prices arbitrarily, and provide against free competition, such combination is one in restraint of interstate commerce, in the meaning of the act of 1890.

In Equity.

Bill by the United States against the Coal Dealers' Association of California and the members of the association, and against Charles R. Allen, Central Coal Company, R. D. Chandler, George Fritch, J. C. Wilson & Co., Oregon Improvement Company, Oregon Coal & Navigation Company, W. G. Stafford, trading as W. G. Stafford & Co., R. Dunsmuir's Sons, John Rosenfeld, Louis Rosenfeld, and Henry Rosenfeld, partners, trading as John Rosenfeld Sons. The bill is brought to secure the dissolution of the Coal Dealers' Association of California, and to set aside an agreement between the said association and the other defendants, relating to the sale of coal in the city and county of San Francisco, alleged to be in restraint of trade and commerce, in violation of the act of July 2, 1890, and for an injunction restraining the defendants from further agreeing, combining, conspiring, and acting together in maintaining rules and regulations and rates and prices for coal brought from British Columbia, Washington, and Oregon to San Francisco, for domestic purposes as fuel.

H. S. Foote, U. S. Dist. Atty., and Alfred L. Black, Sp. Asst. U. S. Atty.

R. Y. Hayne and William Craig, for respondents Coal Dealers' Ass'n of California, Oregon Coal & Navigation Co., W. G. Stafford, and R. D. Chandler.

James T. Boyd and W. H. Fifield, for respondent R. Dunsmuir's Sons.

W. S. Goodfellow, for respondents Central Coal Co., John Rosenfeld, Louis Rosenfeld, and Henry Rosenfeld, partners trading as John Rosenfeld Sons.

John A. Wright and George R. Lukens, for respondents J. S. Wilson & Co.

T. C. Coogan, for respondents Charles R. Allen and George Fritch.

MORROW, Circuit Judge. This is a bill in equity, brought by the United States attorney, upon the authority of the attorney general, in