

chase of stock from Carter & Gibson, and the mortgaging of the company's property to secure the indebtedness created by such purchase of stock, was fraudulent as to existing creditors. Without disputing any of these positions, it is sufficient to say that, as the case is presented to the court, the complainants consented to the purchase of stock from and the execution of the mortgage to Carter & Gibson, and as long as the complainants stand upon the mortgage of November, 1885, which is the basis of their bill, they are estopped from attacking the validity of the Carter & Gibson mortgage.

The injunction *pendente* asked for must be refused, and the restraining order heretofore granted upon a bill not setting forth the conceded facts in the case must be dissolved.

CAMPBELL v. JAMES.

(Circuit Court, S. D. New York. July 14, 1887.)

1. MANDATE ON APPEAL—DISMISSING BILL—AMENDED BILL.

Where a cause was remanded to the circuit court from the supreme court, with directions to dismiss the bill of complaint, *held*, that such mandate included the whole bill upon which plaintiff's case rested, and that a decree of this court dismissing not only the original, but also the amended, bill of complaint, did not go beyond the mandate.

2. SAME—CORRECTING ERROR IN DECREE.

If there was any error in the decree, it could only be corrected at that term, or by proceedings for review under the rules or on appeal, not by motion at a subsequent term.

In Equity.

Marcus P. Norton, for plaintiff.

Stephen A. Walker, U. S. Atty., for defendant.

WHEELER, J. This cause was remanded from the supreme court at its October term, 1881, to this court, with directions to dismiss the bill of complaint. This court, after various delays in the taxation of costs, in its October term, 1883, entered a final decree dismissing the bill and amended bill of complaint, with costs taxed, and awarded execution for the costs. The plaintiff now in this April term, 1887, moves to set aside this decree, and for further proceedings. It is said, in support of this motion, that this court went beyond the mandate to dismiss the bill, by dismissing not only the bill, but the amended bill. It is understood, however, that the bill directed to be dismissed was the whole bill on which the plaintiff's case rested, including the original bill as amended, as well as the original bill as at first filed. Nothing would be accomplished by dismissing the original bill, and leaving the amended bill, on which the cause depended and was tried, still pending. Perhaps it would have been more proper to have made a decree dismissing the bill merely

according to the mandate, leaving it to include the whole bill, as the mandate did. *Campbell v. James*, 104 U. S. 356. But, however that may be, the decree which this court made was full and final, and disposed of the whole case. If there was any error in it, the error could only be corrected at that term, or by proceedings for review under the rules, or on appeal. *Bronson v. Schulten*, 104 U. S. 410; *Phillips v. Negley*, 117 U. S. 665, 6 Sup. Ct. Rep. 901.

This court is without power to open the case now. Motion denied.

MISSOURI PAC. RY. CO. v. TEXAS & PAC. RY. CO. (On intervention of FAGAN.)¹

(Circuit Court, E. D. Louisiana. January 22, 1887.)

RAILROAD COMPANIES—NEGLIGENCE—DAMAGE FROM FIRE.

Where the evidence shows that the fire complained of originated from sparks or other fire from a locomotive of the defendant railway company, in a manner so as to make it reasonably probable and certain enough to raise the presumption of ignorance in the operation of said engine, the defendant company will be held responsible for the damages resulting from the fire.

In Equity. On exceptions to master's report.

J. H. Kennard, Jr., for intervenor.

W. W. Howe and *S. S. Prentiss*, for receivers.

PARDEE, J. Exceptions are filed to the master's report, to the effect that the facts do not establish a presumption of negligence against the receivers, nor a legal basis for a recovery in favor of intervenor. An examination of the evidence shows that all the circumstances point to the fact that the fire originated from sparks or other fire from engine 619 of the railway, not so strongly as to make it certain, but so as to make it reasonably probable, and certain enough to raise the presumption of negligence in the operation of the said engine. This showing is only met by evidence showing that on the morning of the day the fire occurred, July 31, 1886, and four days afterwards, on August 4, 1886, the engine 619 was examined at Marshall shops, and then the condition of the stack-net, the ash-pan, and the dumper was good. The fire occurred about 190 miles west of the Marshall shops, and at least 12 hours after the first examination, and 3½ days before the second. And after the first examination, and before the fire, the engine must have traveled over that distance of 190 miles. At any time between the two examinations, while the engine was in use, the ash-pan or dumper may have been shaken into bad order. Whether the engine was examined at any of the shops west of Marshall does not appear. The master concludes that the engineer so mismanaged the engine, not defective in its appliances, as to

¹Reported by Joseph P. Hornor, Esq., of the New Orleans bar.