

COURT OF ERRORS AND APPEALS.

GEORGE F. TUTTLE,	}
Appellant,	
v.	
AMELIA L. GILMORE,	}
Respondent.	

Brief for Respondent.

The Chancellor's opinion (pages 19-22) is clear as to the facts and point in issue.

The appellant has not properly printed his case. He should have shown the account as previously settled by the court—to which the decree in error had reference, and which are recited in the opinion.

There were three sales by the trustee of lots of Amelia L. Gilmore's trust, of which the trustee did not collect the whole consideration named, and which come in question in this cause.

The first was May 15th, 1871, for \$6472.76, of which he collected \$4700, and lost \$1772.76.

The second and third were both on August 28th, 1871, for \$500 and \$18,000, respectively, of which he collected nothing, losing the whole.

The Court of Chancery deciding that the trustee in these several sales was not accountable for the *agreed* consideration, but that he was accountable for the *real* value of the

lots, these lots were valued by the court, and in the account settled by the Chancellor he was charged three separate charges.

1. \$790, as of the date of May 15th, 1881 (being the difference between \$5490, the ascertained value of the lots sold then and the \$4700 received).

2. \$550 for the value of the lots sold in the first deed of August 28th, 1871.

3. \$7700 for the lots sold by the second deed of that date.

These items appear as separate charges of these dates in the account of 1871 (on pages 95, 96, as printed for the previous argument in this court), as follows :

“ May 18th. Received consideration deed, \$790.

“ August 28th. Consideration of deed, \$7700.

“ August 28th. Received consideration of deed, \$550.”

If in the account on pages 8 and 9 of the present case we strike out the item, “ August 28th, consideration of deed, \$2750,” and insert the above charges—the first between the items of May 16th and 18th, on page 8; the second between the items of August 1st and September 4th, on page 9, and the third just before the last item of that page, it becomes a copy of the account as previously settled.

These three separate charges were, as is seen, based on an appraisal of these lots separately, which made the value of the lots :

Lots 14 to 22,	\$5490
Lot 23,	550
Lots 2 to 11, inclusive,	7700
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Making altogether,	\$13,740

Such a scheduled appraisal was printed in the former case (page 73), and was the *foundation* of the charges in the account—though, as is seen, no such charge as \$5490 was made in the account adopted by the Chancellor and printed (pages 95, 96), but only of the uncollected *balance* of that sale.

The Court of Appeals thought the valuations adopted by the Chancellor as made by Aaron Quinby too high. They preferred the valuations of William B. Smith as given in his evidence (page 81 of the old case) in lots. A schedule of values made from that evidence is on page 15 of the present case.

This court, in their opinion, say (9 Stew. Eq. 625) that the opinion of three witnesses respecting the value of the lands was taken (Quinby, Walter E. Smith and William Smith), approves of the opinion of the third and says, "I feel compelled to rely on that opinion which alone seems founded on facts which justify it, and which is otherwise corroborated. *Taking that valuation the trustee should be charged for the value of the lots sold—the sum of \$5332, instead of the sum which he was actually charged. * ** The decree below ought, therefore, to be, to this extent, reversed, and the record remitted, that a new decree may be made in conformity with these views as to the amount with which the trustee should be charged for the value of the lands conveyed by him in violation of his trust."

Decree accordingly was made "that the said appellant, in his account as trustee, should be charged with the said sum of \$5332 as the value of said lands at said time, instead of the sum of \$13,740 with which he was charged, and that the said decree of July 28th, 1882, to the extent that the same charges, *or is based upon charging*, against said appellant more than the sum of \$5332 as the value of said lands *at the time they were conveyed, be and the same is hereby reversed.*

By this decree, no change was made in the *mode* of making up the account, as stated according to the facts, in separate charges of separate sales of separate dates. The only change was in the valuation of the lots.

By this new valuation, we arrive at the following changes:

May 15th, 1871. The trustee sold lots at a consideration of \$6472.76, of which he received \$4700. By Smith's valuation, the lots at that time were worth only \$2682.

The trustee lost nothing and thus is not to be charged anything for that sale and is charged nothing by the decree.

But on the sales of August 28th, 1871, he received nothing. He is charged Smith's valuation, of the lots then sold, of \$2750, instead of the previous charges of \$550 and \$7700.

The charge is: "1871. August 28. Consideration of deed, \$2750." Page 9.

The appellants except to this account, and now appeal. They insist that a lump charge for *all* sales made by the trustee should have been made, and that thus the \$4700 collected on one transaction should be considered an overpayment, credited on the money he lost in another.

They want the whole frame of the accounts to be changed, and *one* charge to be made instead of *three*, in order to do the gross injustice of crediting himself part of what he got on one sale, as if he had taken it out of his own pocket, so as to charge it to his trust on another.

We insist—

1. The decree of this court intended to fix the value of the lots, as to which the trustee was charged with misconduct—not to change the form or mode of accounting.

2. It did not intend making for the trustee a *false* credit on one sale to charge against his *cestui que trust* on another.

3. Instead of charging *one* value, another was to be charged. But this value has never been charged as one sum, or in lump, or in whole. It was charged in parcels, with credits in separate sales. The other was intended to be charged in the same *way*. We have followed the decree on appeal.

4. The decree now made is entirely consistent with the decree of this court and in true fulfillment of it.

R. WAYNE PARKER,
Of Counsel.

Court of Errors and Appeals.

Between

GEORGE F. TUTTLE,
Appellant,

and

AMELIA L. GILMORE, *et al.*,
Appellees.

*On Appeal
from
Chancery.*

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BRIEF FOR APPELLANT.

I. 20

STATEMENT.

1. When this same case was formerly before the Court, (see 9 Stewart, p. 617,) it was finally "ordered, adjudged and decreed," (*inter alia*,) "*that the value of the lands held by him (the appellant,) in trust, conveyed by the said appellant to Amelia Burnet Gilmore, referred to in paragraph 9 of the complainant's bill, at the time the same were conveyed, was the sum of \$5,332, and the said appellant in his account as trustee should be charged with the said sum of \$5,332, as the value of said lands at said time, instead of the sum of \$13,740, with which he was charged, and that the said decree of July 28th, 1882, to the extent the same charges, or is based upon charging against said appellant, more than the said sum of \$5,332, as the value of said lands at the time they were conveyed, be and the same is hereby reversed, set aside and for nothing holden, and in other respects is affirmed.* And it is further ordered, adjudged and decreed that the record and proceedings be remitted to the Court of Chancery, to the end that this decree may

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be carried into execution, and that a decree be therein entered pursuant to this decree, with costs of this appeal to be paid by the respondents." (Case, p. 2.)

2. That this decree is in accordance with the opinion in this Court, will appear by reference to 9 *Stewart*, page 626.

3. On *remittitur*, the decree of this Court was made the decree of the Court of Chancery. (Case, p. 5.)

10 4. September 25, 1883, (more than five months after the decree of this Court, and *after one whole term had intervened*, with ample opportunity for the appellees to apply to this Court to correct its decree, if erroneous in principle or figures, and without improving that opportunity,) an order of reference to a Master was taken, for a restatement of the account against the appellant, "*so far as respects the amounts charged against the said George F. Tuttle on account of said sale of lots to Amelia B. Gilmore on the principles aforesaid.*" (Case, p. 5.)

2) 5. The report of the Master was made October 1, 1883, (Case, p. 6,) but was withheld from the files until July 1, 1885—nearly two years—when a rule *nisi* was entered.

6. Exceptions were duly filed and a decree made thereon, from which this appeal is taken.

(See Case, pp. 17, 23.)

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II.

POINTS.

The order was erroneous.

1. This Court, by its decree on the former appeal, determined and settled not only the *principles* in controversy, but the *amounts and figures involved*.

(1.) The valuation of "*all the lots in paragraph 9 of the complainants' bill, at the time the same were conveyed, was the sum of \$5,332.*" So reads the decree of this

40 Court.

2. The decree appealed from charges the appellant with *more than \$5,332 for the lots in question*, and therefore is erroneous.

3. The decree so far as it fixed the valuation and the amount to be charged against the appellant, was disregarded by the Court below, on the assumption that the Court above *miscalculated or misstated the amount and committed an error*.

4. If the assumption was well founded, *the remedy was to apply to this Court to correct or amend its own decree*, not to appeal to the Court below. 10

Ample time was afforded for such an application to this Court, as shown in the preliminary statement.

5. It is well settled that the final decree of an appellate court, whether deemed erroneous in its *principles* or in its *figures*, cannot be corrected by the Court below; and that any order or decree for that purpose will be reversed. 20

See *McNeill vs. Cahill*, 2 Bligh's Reports, N. S. 316.

Where the Court of Appeals certify a case back to the Chancery Court for a final decree, the latter cannot alter the terms of the decree of the Court of Appeals.

White vs. Atkinson, 2 Call. 376 ;

See also *Werborn vs. Pinney*, 76 Alat. 291 ;

Murrill vs. Murrill, 90 N. C. 120.

The decree of the appellate court must be enforced by the Court below, *although the appellate court made a palpable mistake in calculating the amount of the decree*. 30

Price vs. Campbell, 5 Call. 115.

This case is so like the present and so conclusive, that a full report is appended for convenience.

It is submitted that the decree appealed from should be reversed.

JOHN W. TAYLOR,
Of Counsel for the Appellant.

APPENDIX.

Price vs. Campbell, 5 Call ; 115.

10 “The suit, in this case, was brought to foreclose a mortgage given to secure payment of a sterling debt ; but, through mistake, the commissioner, in stating the account, calculated it as current money, which, of course, greatly reduced the demand. This report, however, was, without observing the error, confirmed, and an interlocutory decree made for a sale of the mortgaged property to satisfy it. The defendants appealed to the Court of Appeals, where the decree was affirmed. But when the cause went back to the Court of Chancery, the mistake was discovered, and by that Court corrected. The defendants appealed from the
20 correcting decree to the Court of Appeals.

“For the appellants it was insisted that the Court of Chancery had not authority to change the decree of this Court. That the precedent would be dangerous, if inferior tribunals should be allowed to alter the decrees of the Court of Appeals, as there would then be no end to controversies ; and no man could say when a suit was ended. That, if the practice prevailed, the decrees of this Court might be altered after they had been carried into execution by the Court of Chancery ; the cause put off
30 the docket, and to every appearance finally ended. That *interest reipublicae ut sit finis litium*, was a sound maxim ; and it was upon this ground that *White vs. Atkinson*, 2 Call. 376, was decided, which ought to be adhered to.

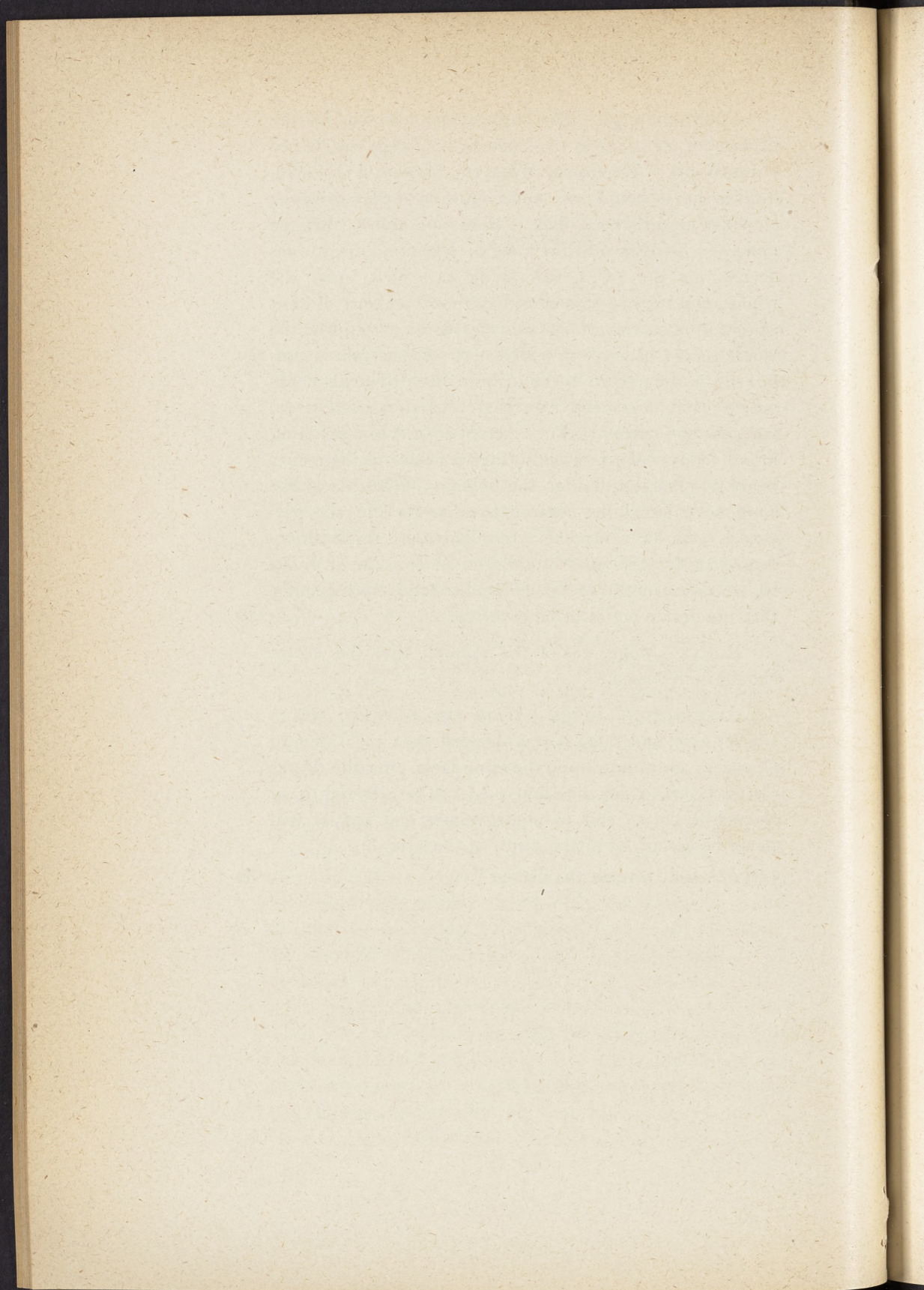
“On the other side it was contended, that, as the decree was interlocutory, it might be corrected ; and that no change could result from it, as the point had never been mentioned, or adverted to by this Court at the time of affirming the first decree.

“TUCKER, Judge. The single question is, whether the Chancellor could, upon the same facts, change the decree of this Court. The case of *White vs. Atkinson*, 2 Call. 376, decides that he could not; and I approve of that decision; it makes no difference that it does not appear that the mistake was noticed at the time of affirming the former decree, for the point was fairly presented upon the record, and it cannot be admitted that the Court did not advert to it. A contrary doctrine would overthrow the whole theory of the law, which supposes everything contained in the record to have been decided on, and has wisely established the rule that *interest reipublicae res judicatas non rescindi*. For I cannot conceive of anything more inconvenient to society, than a power in the courts below to reverse and alter the solemn judgments of the supreme tribunal, as controversies would then be perpetual, and suits become interminable. I think, therefore, that the principle established in the case of *White vs. Atkinson*, ought to be adhered to, and consequently that the decree ought to be reversed. 10 20

“ROANE, Judge, was of the opinion that the decree should be reversed.

“CARRINGTON, Judge. *White vs. Atkinson*, was a similar case, and there it was decided that the Court of Chancery could not, upon the same facts, alter the decree of this Court, which decision ought to be adhered to, or there will be no end to controversies, and parties will never be certain as to the result of the suit.

“*Per. cur.*, reverse the decree.” 30



“It appears clearly that by the sales to Mrs. Amelia B. Gilmore, a large part of the tract of $17\frac{34}{100}$ acres was almost entirely lost to the estate. Out of all the securities (they were all second mortgages) taken for the consideration thereof, only \$1,000 were realized by the trustee, and that money was obtained by the assignment of one of the mortgages.” In the opinion of Mr. Justice MAGIE, on appeal, the statement is: (9 Stew. 620,) “The evidence shows that the second mortgages received had
10 proved worthless, except to the extent of \$1,000, which in some way, not clearly explained, had been realized thereon.”

It is evident, I think, that neither the Court of Chancery nor this Court, ever supposed that there was any evidence in the case on which to base an appropriation or treatment of the \$1,000 DeCamp mortgage as being part of the consideration for the sale of the first tract, and the language of the opinion of the Court of Appeals is, (9 Stew. p. 626): “Taking that valuation
20 the trustee should be charged, for the value of *the lots* sold, the sum of \$5,332, instead of the sum which he was actually charged.” *Ib.* “The decree below ought, therefore, to be to this extent reversed and the record remitted, that a new decree may be made, in conformity with these views, as to the amount with which the trustee should be charged for the value of the lands conveyed by him, in violation of his trust. In other respects the decree should be affirmed.”

The decree of the Court of Appeals and in the Court
30 of Chancery on remittitur, having been made pursuant to the terms of this opinion, the Master should have restated the account charging the trustee with the sum directed by the Court of Appeals, and the Master had no right to charge him with the \$1,000 DeCamp mortgage *in addition* to the value of the land, as he has done in his report. (See *Case*, p. 12, l. 26,) charge.

“Received assignment of DeCamp mortgage, \$1,030.95.”

If the Master undertook to vary the decree of this Court in restating the account, he is at least bound to
40 show the Court the evidence on which the charge is

based, and showing that it is equitable and just. As a matter of fact there is no evidence on which to base this charge, and can be none, because the date of the DeCamp mortgage is, in fact, *October 2, 1871*, after the last conveyance, and was assigned to the defendant March 25, 1872. (These facts as to the dates are not in evidence, and have just been ascertained.)

The Master further having charged the defendant with interest on the value of the land, (which is proper,) has also charged him with the following sums for interest on 10 the DeCamp mortgage, viz:

April 8, 1872, . . .	\$35 00	Case, p. 10, l. 26.
Oct. 31, 1872, . . .	35 00	" p. 11, l. 11.
April 2, 1872, . . .	35 00	" p. 12, l. 1.
Sept. 18, 1872, . . .	30 95	" p. 12, l. 18.

Total charges for int. \$135 95

This charge of the trustee with interest on the DeCamp mortgage, in addition to interest on the amount fixed for the value of the balance of the land, (\$2,750), is also a 20 double charge, and should be corrected in favor of the trustee.

On the theory of the Chancellor, that the Court meant by their decree only to *illustrate* how the charges should be made, and that the valuations of witness Smith (whom the Court does not name at all,) are the measures of the charge for each lot, then, *so far as the charges against defendant for land* is concerned, the account would stand as follows:

The premises included in the first conveyance, viz. that 30 of May 15, 1871, conveyed lots Nos. 14 to 22 inclusive, and the valuation of these, according to Smith, was \$2,682. (*Master's Report*, Case, p. 7, l. 17, &c. *Schedule*, No. 2, Case, p. 15.) The defendant having received \$3,700 by the homestead for this property is, on the above basis, chargeable with the whole amount, \$2,682, and also with the additional \$1,018, necessary to make up the \$3,700; and inasmuch as the benefit of conveyance, of the homestead has been wholly received by the beneficiaries, the trustee is to be credited with the whole 40

\$3,700 as paid, and this for convenience may be left out of the account.

As to the balance of the land the trustee, on the same basis, should be charged with the valuation as fixed by the Court, viz. \$5,332, less \$2,682,	\$2,650 00
Interest thereon from day of sale to September 18, 1873,	195 80
	<hr/>
	\$2,845 80

10 and should receive credit for the \$1,000, amount received and paid over to the estate September 18, 1873, together with the interest received on this mortgage, and paid over to the estate as above, \$135.95, making \$1,135.95, and leaving the balance due from the trustee, on account of the land, at \$1,709.85 on October 18, 1873. He should then, also, in addition, be charged in the account, (as he has charged himself,) with the amount of money received for the bond and interest. He ought not, however, to be charged with the amount he has received for the bond and interest, *in addition to the whole value of the*
 20 *land* and interest, because this is in effect to charge him with that much more than the Court of Appeals directed.

The Master has made this additional charge, by charging him Aug. 28, 1871, with the whole value of the land, \$2,750, (*Case*, p. 9, l. 27,) and also with the amount received for the bond and interest, \$1,030.95, (*Case*, p. 12, l. 15.) He has allowed *no credit* to the defendant for the \$1,000 bond and interest paid to the estate, as we have seen, even on the basis of dividing the valuations. This
 30 cannot be sustained, and the exception to his report for failure to make this credit should have been sustained.

THIRD POINT.

The Master's Report to the Chancellor compounds the interest from *October 18, 1880*, (*Case*, p. 15, l. 8.) This was excepted to, (*Case*, p. 18, l. 4, &c.,) and this exception should have been sustained.

John L. Emery,
 Counsel with Appellant.

Court of Errors and Appeals.

<i>Between</i>	}	<i>On Appeal.</i>	10
GEORGE F. TUTTLE,			
<i>Appellant.</i>			
<i>and</i>			
AMELIA L. GILMORE, <i>et al.</i> ,			
<i>Appellees.</i>			

CASE.

I.

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DECREE OF REVERSAL ON FORMER APPEAL.

<i>Between</i>	}	<i>On Appeal.</i> <i>Decree of Re-</i> <i>versal, etc.</i>	
GEORGE F. TUTTLE,			
<i>Appellant,</i>			
<i>and</i>			
AMELIA L. GILMORE, <i>et al.</i> ,			
<i>Respondents.</i>			

Opinion by JUSTICE MAGIE.

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For affirmance—none.

For reversal—the Chief Justice, Justices Depue, Dixon, Knapp, Magie, Parker, Reed, Scudder and Van Syckel, and Judges Cole, Green, Kirk and Whitaker, 13.

The cause having been brought to a hearing on an appeal from the Court of Chancery, at the present term of this Court, and John R. Emery and John W. Taylor of counsel with the appellant, and R. Wayne Parker of counsel with the respondents, having been heard, and the questions brought up by said appeal duly considered, 40

It is, on this sixteenth day of April, eighteen hundred and eighty-three, ordered, adjudged and decreed that so much of the decree of the Court of Chancery made on the twenty-eighth day of July, A.D. eighteen hundred and eighty-two, as adjudged and decreed that the said appellant was chargeable in said cause in the accounting between him and the trust with the sum of \$14,031.08, with interest from October 18, 1880 ; and that as part of said sum he should pay to the complainant, Amelia L. Gilmore, the sum of \$5,536.23, arrears of interest and support of children with interest thereon from said date, and that he forthwith pay the said sums to the complainant ; and also so much of said decree as adjudged that said appellant do pay to the Clerk in Chancery the said balance of said trust funds with which he was so made chargeable as aforesaid, with interest, be and the same is reversed, set aside and for nothing holden. And it is further ordered, adjudged and decreed that the value of the lands held by him in trust, conveyed by the said appellant to Amelia Burnet Gilmore, referred to in paragraph 9 of the complainant's bill, at the time the same was conveyed, was the sum of \$5,332, and the said appellant in his account as trustee should be charged with the said sum of \$5,332, as the value of said lands at said time, instead of the sum of \$13,740, with which he was charged, and that the said decree of July 28th, 1882, to the extent the same charges, or is based upon charging against said appellant, more than the said sum of \$5,332, as the value of said lands at the time they were conveyed, be and the same is hereby reversed, set aside and for nothing holden, and in other respects is affirmed. And it is further ordered, adjudged and decreed that the record and proceedings be remitted to the Court of Chancery, to the end that this decree may be carried into execution, and that a decree be therein entered pursuant to this decree, with costs of this appeal to be paid by the respondents.

On motion of

JOHN W. TAYLOR,

Solicitor for Appellant

II.

DECREE IN CHANCERY ON REMITTITUR.

IN CHANCERY OF NEW JERSEY.

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*Between*AMELIA L. GILMORE, *et al.*,
*Complainants,**and*GEORGE F. TUTTLE, *et al.*,
Defendants.} *Decree of Re-*
versal.

Upon opening the matter this day to the Court by John W. Taylor, of counsel with the defendant, George F. Tuttle, and it appearing that said defendant filed an ap- 20
 appeal from the decree made in this cause on the twenty-
 eighth day of July, eighteen hundred and eighty two, to
 the Court of Errors and Appeals in the last resort, and
 that the said appeal has been determined and the pro-
 ceedings have been remitted to this Court to proceed
 further thereon according to law ; and on reading the re-
 mittitur from the said Court of Appeals, whereby it
 appears that it was ordered and decreed by said Court
 that so much of said decree of the Chancellor as adjudged
 and decreed that said George F. Tuttle was chargeable 30
 in this cause in the accounting between him and the
 trust, with the sum of \$14,031.08, with interest from
 October 18th, 1880 ; and that as part of said sum he
 should pay to the complainant, Amelia L. Gilmore, the
 sum of \$5,536²³/₁₀₀ arrears of interest and support of chil-
 dren, with interest thereon from said date, and that he
 forthwith pay the said sums to the complainant ; and
 also so much of said decree as adjudged that said George
 F. Tuttle pay to the Clerk in Chancery the said balance of
 said trust funds with which he was so made chargeable 40

as aforesaid with interest, be reversed, set aside and for nothing holden; and that it was further ordered, adjudged and decreed by said Court that the value of the lands held by him in trust conveyed to Amelia Burnet Gilmore, referred to in paragraph 9 of the complainants' bill, at the time the same was conveyed, was the sum of \$5,332 $\frac{00}{100}$, and the said George F. Tuttle in his account as trustee should be charged with the sum of \$5,332 $\frac{00}{100}$ as the value of said lands at said time, instead of the sum of \$13,740 $\frac{00}{100}$ with which he was charged, and that the said decree of July 28th, 1882, to the extent the same charges, or is based upon charging against said George F. Tuttle more than the said sum of \$5,332 $\frac{00}{100}$ as the value of said lands at the time they were conveyed, be reversed, set aside and for nothing holden; (and in other respects is affirmed) with costs of said appeal to be paid by the respondents.

It is thereupon on this 12th day of June, eighteen hundred and eighty-three, on motion as aforesaid, ordered and decreed, that the said decree of the Court of Errors and Appeals be and the same is hereby made the decree of this Court.

And it is further ordered that the deposit made by said defendant for costs on said appeal be repaid to him or his solicitor with its accumulations, less the clerk's commissions.

THEODORE RUNYON, C.

III.

ORDER OF REFERENCE.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i> AMELIA L. GILMORE, <i>Complainant,</i> <i>and</i> GEORGE F. TUTTLE, AND OTHERS, <i>Defendants.</i></p>	}	<p>Order.</p>	<p>10</p>
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The decree in this cause having been reversed on appeal, so far as respects the amount for which George F. Tuttle is accountable, with directions that there be allowed against him in respect of lots sold to Amelia Burnet Gilmore, the valuations set on said lots by William B. Smith, the witness for said Tuttle, and not the values allowed by the Master and this Court; 20

It is, on this twenty-fifth day of September, eighteen hundred and eighty-three, ordered, adjudged and decreed by the Chancellor that it be referred again to William Paterson, Esq., one of the special Masters of this Court, to restate the account of George F. Tuttle, with the trust contained in Schedule No. 1, of the last report of said Master, so far as respects the amounts charged against the said George F. Tuttle on account of said sales of lots to Amelia Burnet Gilmore, on the principles aforesaid, and that he also restate the balances and interest contained in Schedule No. 1, with yearly rests since the time of said sales; and that the said Master do make his report thereon with all convenient speed, and all equity is reserved till the coming in of the said report. 30

THEODORE RUNYON, C. 40

IV.

MASTER'S REPORT.

IN CHANCERY OF NEW JERSEY.

10	<p style="text-align: center;"><i>Between</i></p> <p style="text-align: center;">AMELIA L. GILMORE,</p> <p style="text-align: center;"><i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">GEORGE F. TUTTLE, <i>et al.</i>,</p> <p style="text-align: center;"><i>Defendants.</i></p>	}	<i>On Bill, &c.</i>
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REPORT OF MASTER, 1ST OCTOBER, 1883.

20 In pursuance of an order of the Court of Chancery of
of New Jersey, entered in this cause on 25th day of
September last, whereby it was ordered that it be re-
ferred to the subscriber, a special Master of this Court,
to restate the account of George F. Tuttle, with the trust
contained in Schedule No. 1, of the last report made by
said Master under date of 15th March, A.D. 1882, so far
as respects the amounts charged against the said George
F. Tuttle, on account of sales of lots made to Amelia
Burnet Gilmore, according to the valuation set on said
lots by William B. Smith, and also to restate the balances
and interest contained in said Schedule, I do report:

30 That I did issue process of summons to said George
F. Tuttle, as will appear by acknowledgment of service
annexed hereto, and have proceeded to consider the
matters referred to me by said order, and report as
directed therein.

40 That in order to charge the defendant, Tuttle, with
the value of lands sold by him and for which he had
received no consideration, I have commenced the restate-
ment of the account from 1st January, A.D. 1871, and
continued the same by annual balances with interest
thereon, as directed to be computed by order of this Court,

on 30th December, A.D. 1881, and the result will appear in Schedule No. 1, annexed hereto; and I find there was due from the said George F. Tuttle, trustee, to the trust fund, on the first day of October, A.D. 1880, the date of my former report, the sum of three thousand eight hundred and ninety-two dollars and ninety-three cents, ($\$3,892\frac{93}{100}$;) and on this day, 1st October, 1883, the sum of four thousand four hundred and forty-seven dollars and sixty-seven cents, ($\$4,447\frac{67}{100}$.)

That the valuation of the aforesaid lots, as appraised 10
by said William B. Smith, will appear in Schedule No. 2,
annexed.

That by the testimony and answer of the trustee it appears the sales of the lots of land made by him out of the premises conveyed to him for purposes of this trust, and connected with this investigation, was made in three deeds.

That the first of said deeds was dated on the 15th day of May, A.D. 1871, and was recorded on the 20th day of the same month in Book N 15, on page 581, and conveys 20
lots designated in Schedule No. 2, Nos. 14, 15, 16, 17, 18, 19, 20, 21 and 22, for a consideration by which or a part of which, the trustee acquired the property mentioned in these proceedings as the homestead for Mrs. Amelia L. Gilmore, at a cost of \$3,700 to the trust, and upon which the further sum of \$1,000 was realized by money received for assignment of the security, called the DeCamp mortgage, as shown by the account of the trustee in Schedule No. 1; and the valuation of the lots contained in that deed as appraised by William B. 30
Smith, which I am directed by the order of reference to follow, not exceeding the consideration so realized by the trustee; the said trustee should not be charged with any further sum on account of the sale of these lots, it being admitted by the complainant and the trustee that both the homestead and the DeCamp mortgage were acquired by the trustee as part consideration of first sale and deed.

That the second and third of such deeds, both dated 28th August, 1871, recorded respectively in Book W 15, 40
on page 173, and on 5th October, 1871, in Book Z 15,

on page 91, for county of Essex, conveying severally lot No. 23, and lots Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, for a consideration which appears from said testimony and answer, to have failed, wholly and entirely, and nothing to have been realized by the trustee, he is to be and has been charged in the account, as stated in the Schedule No. 1, with the sum of \$2,750, according to the appraisal of these lots as made by said William Smith, and interest thereon.

10 Respectfully submitted, 1st October, 1883.

W. PATERSON, *Sp. M. C. C.*

SCHEDULE NO. 1.

Restating the account of the trustee, since 1st January, A.D. 1871, with yearly rests, interest on balances, charging interest at the rate of six per cent., since 4th July, A.D. 1878, on the valuation of land directed to be taken by decree of remittitur, 16th April, 1883.

		1871.	
20	Jan. 1. Balance payments on receipts for A.D. 1870		\$25 57
	1. Interest at 7 per cent. to 31st December, 1871 ..		1 79
	4. Paid Mrs. A. L. Gilmore.....		19 00
	10. Received from J. R. Gilmore.....	80 43	
	14. Paid Mrs. A. L. Gilmore.....		181 00
	14. Received from J. R. Gilmore.....	133 33	
	14. Paid rent for Mrs. Gilmore.....		133 33
	April 7. Paid A. L. Gilmore, Jr., from J. R. G.	75 00	75 00
	May 2. Received from J. R. Gilmore.....	62 50	
30	3. Paid for board to 1st June, 1871, per receipt Mrs. G.....		62 50
	16. Received from Morris Hedden, for pasturage in 1870, fences included,	50 00	
	18. Paid drawing special deed and stamps to A. B. G.		25 00
	18. Paid assignment of six bonds and mortgages to Sarah C. Logan...		3 00
	20. Paid stamps on deed to A. B. Gilmore.....		6 50
	20. Paid search on property bought of Logan.		9 32
	20. Paid insurance assessed on Logan property.....		5 00
40	20. Received interest on mortgage....	18 81	

May 20.	Paid recording deed, Logan to Tuttle, trustee.....		1 30	
20.	Paid registering 7 mortgages to trustee, from J. R. Gilmore and wife.....		5 50	
27.	Paid Mrs. A. L. Gilmore in full to 2d March, 1871, on bal. of \$2,000,	103 26		
June 5.	Received from J. R. Gilmore, board,	25 00		
5.	Paid Mrs. A. L. Gilmore on account,		12 50	
13.	" " " " " "		10 00	
17.	" " " " " "		32 50	
20.	Paid fare to Orange and taxes....		30 32	10
21.	Paid Mrs. Gilmore from J. R. G. to 1st July, 1871.....	37 50	37 50	
July 10.	Received from J. R. Gilmore.....	55 50		
10.	Received already paid by him to Mrs. G.....	7 00		
	Carried forward.....	545 07	779 89	
1871.	Brought forward.....	545 07	779 89	
July 11.	Paid Mrs. Gilmore in full to 1st August, 1871.....		62 50	
Aug. 1.	Received from J. R. Gilmore to 1st September, 1871.....	37 50		
1.	Balance heretofore paid by him to Mrs. Gilmore.....	25 00	25 00	20
1.	Received from J. R. Gilmore for interest, Hutchings, and board..	167 50		
Sept. 4.	Received from J. R. Gilmore for board, 10-1-'71.....	25 00		
4.	Paid Mrs. Gilmore on acc. of board, to 10-1-'71.....		25 00	
Aug. 2.	Paid Mrs. Gilmore part interest of \$10,000 to July 2, 1871.....		100 00	
28.	Consideration of deed.....	2,750 00		
Sept. 26.	Received from J. R. Gilmore, balance of board to 1st Oct., 1871..	7 50		
26.	Received from James R. Gilmore, already paid.....	30 00		30
26.	Received from James R. Gilmore, on acc. of board for Nov., 1871..	30 00		
27.	Paid S. Hutchinson, tuition of Willy,		15 00	
26.	Paid Mrs. Gilmore, per receipt....		67 50	
Oct. 4.	Received from J. R. Gilmore, balance of board to 1st Nov. 1871...	32 50		
4.	Paid Mrs. Gilmore, per receipt....		32 50	
21.	Received from A. Carter, rent for 1871.....	75 00		
21.	Paid taxes in Orange for 1871.....		76 50	
Dec. 9.	Received from J. R. Gilmore for board, and paid Mrs. G.....	50 00	50 00	
Aug. 28.	Paid Mrs. Gilmore, per receipt....		67 50	
		<u>\$3,775 07</u>	<u>\$1,301 39</u>	40

1872.	1872.		
	Balance of receipts over payment, \$2,473 68		
	Interest at 7 per cent. to 31st December, 1872.....	173 16	
Jan. 12.	Received bal. board, \$45, to Feb. 2, 1872, with \$30 on 5th.....	75 00	
13.	Paid Mrs. Gilmore, balance under acc. March, 1869.....		75 00
15.	Received from J. R. Gilmore for A. L. Gilmore, Jr.....	50 00	
17.	Paid A. L. Gilmore, Jr., to 1st March, 1872, per receipt.....		50 00
10	26. Received from J. R. Gilmore, to pay interest on mortgage.....	42 00	
29.	Paid D. C. Runyon same, on homestead.....		42 00
Feb. 2.	Received from J. R. Gilmore, for board children.....	62 50	
	Carried forward.....		
1872.	Brought forward... ..		
Feb. 2.	Paid Mrs. A. L. Gilmore, board to 1st prox.....		62 50
20	Mch. 9. Received from J. R. Gilmore for board to 1st April, and paid Mrs. G.	62 50	62 50
Apl. 19.	Received from J. R. Gilmore for board to 1st May, and paid Mrs. G.	62 50	62 50
20.	Received from J. R. Gilmore for A. L. G., Jr., and paid.....	25 00	25 00
25.	Paid taxes on Hogan homestead..		40 32
8.	Received int. from Job DeCamp...	35 00	
May 7.	Received from J. R. Gilmore on acc. of interest.....	100 00	
7.	Paid Mrs. A. L. Gilmore, per receipt,		35 00
7.	" " " " " "		10 00
16.	" " " " " "		43 05
30	20. Received from J. R. Gilmore for board to 1st prox.....	62 50	
20.	Received from J. R. Gilmore, on acc. of interest.....	21 00	
23.	Paid Mrs. A. L. Gilmore, board to 1st prox.		62 50
June 5.	Received from J. R. Gilmore on acc. of board.....	20 00	
15.	Paid Mrs. A. L. Gilmore on acc. of board.....		20 00
15.	Paid Mrs. A. L. Gilmore on acc. of board.....		10 00
40	19. Paid int. to Runyon, mortgage on homestead.....		21 00

July 1.	Received of J. R. Gilmore, balance board to date.....	42 50	
2.	Paid Mrs. A. L. Gilmore in full to date.....		32 50
5.	Received of J. R. Gilmore, board in full to 1st prox.....	62 50	
8.	Paid John Reeve, per order of Mrs. A. L. Gilmore.....		50 00
13.	Paid Mrs. A. L. Gilmore balance board to 1st August		12 50
Oct. 17.	Received of J. R. Gilmore, on acc. of B. & M., W. 5, 349	40 00	
17.	Paid Mrs. Gilmore, on acc. of int..		40 00 10
31.	Received interest from Job DeCamp,	35 00	
31.	Paid Mrs. A. L. Gilmore on acc...		35 00
Nov. 15.	Received from J. R. Gilmore on int. B. & M., W. 5, 349.....	25 00	
15.	Paid Mrs. A. L. Gilmore on acc....		25 00
19.	Received from J. R. Gilmore bal. int. on B. & M., May 1, 1872.....	147 30	
20.	Paid Mrs. A. L. Gilmore on acc. of interest.....		147 30
26.	Received on B. & M. from John Robinson.....	129 50	
27.	Received of J. R. Gilmore on acc. of interest.....	10 00	20
27.	Paid Mrs. A. L. Gilmore.....		10 00
	Carried forward.....		
1872.	Brought forward		
Dec. 2.	Paid taxes on homestead.....		20 23
2.	Paid McClaves, for Mrs. Gilmore..		50 00
31.	Received of J. R. Gilmore.....	50 00	
		<u>\$3,806 64</u>	<u>\$1,043 90</u>

1873.	1873.	30
	Balance of receipts over payments, 2,762 74	
	Interest at 7 per cent. to 31st December, 1873.	193 39
Jan. 3.	Paid Mrs. A. L. Gilmore on acc. of board	25 00
5.	Paid Mrs. A. L. Gilmore on acc. of board	25 00
3.	Paid interest to D. C. Runyon on B. & M.....	21 00
Feb. 12.	Paid Mrs. A. L. Gilmore in full for board of children to 1st inst., under agreement 2d March, 1869,	351 00
12.	Paid Mrs. Gilmore on acc. of int...	64 89 40

	Apl. 2.	Received interest on DeCamp mort.	35 00	
	28.	Received on acc. interest for J. R. Gilmore and wife.....	100 00	
	28.	Paid Mrs. A. L. Gilmore on acc. of interest.....		100 00
	May 2.	Paid insurance on homestead		7 00
	June 12.	Received of J. R. Gilmore on acc. of interest.....	100 00	
	13.	Paid Mrs. A. L. Gilmore on acc. of board		100 00
	Aug. 2.	Paid interest on mort. on Steuben street house.....		21 00
10	15.	Received of J. R. Gilmore....	80 00	
	15.	Paid Mrs. Gilmore		80 00
	Sept. 15.	Received interest from Robinson to 1st Sept.....	129 50	
	17.	Paid over for Mrs. Gilmore, per order and receipt.		50 00
	18.	Received assignment of DeCamp mortgage	1,030 95	
	18.	Paid Mrs. A. L. Gilmore by check.		50 00
	20.	" " " " in full....		684 71
	Nov. 1.	" " " "		62 50
	15.	Received interest from J. Robinson to 1st.....	129 50	
20	20.	Paid taxes on Steuben st. property,		46 02
	Dec. 3.	Paid Mrs. A. L. Gilmore, board to date.		62 50
	31.	Paid Mrs. A. L. Gilmore, board to date.		62 50
			<u>\$4,561 08</u>	<u>\$1,813 12</u>

	1874.		1874.	
		Balance of receipts over payments,	2,747 96	
		Carried forward		
30	1874.	Brought forward	2,747 96	
		Interest at 7 per cent. to 31st December, 1874.....	192 36	
	Jan. 31.	Paid Mrs. A. L. Gilmore, board to 1st February.....		62 50
	Feb. 28.	Paid Mrs. A. L. Gilmore, board to 1st March.....		62 50
	28.	Paid assignment, Robinson mortgage to Langdon.....		3 00
	Apl. 4.	Paid Mrs. Gilmore, board to 1st inst.		62 50
	4.	" " " " on acc. of int....		73 00
	18.	" " " " advanced by me,		31 68
	May 16.	" " " "		30 52
40	Aug. 10.	" " " "		27 00

Aug. 10.	Received balance on sale of insurance stock rec'd from J. R. G....	281 86	
27.	Paid interest on mortgage to D. C. Runyon		42 00
29.	Paid Mrs. Gilmore		50 00
Aug. 29.	" " " advanced by me,		6 00
Sept. 16.	" " " "		10 06
7.	" " " "		10 00
Oct. 17.	" " " "		2 00
Nov. 28.	Received consideration of deed to A. Quinby	1,000 00	
28.	Paid Mrs. Gilmore	200 00	10
6.	Paid Sheriff costs on execution, vs. Earle, to be deducted from above credit of \$281.26	58 77	
18.	Paid C. W. Frome, order of Mrs. Gilmore	5 00	
Dec. 10.	Paid Mrs. Gilmore	25 00	
12.	" " "	550 00	
9.	" " "	9 00	
29.	" " "	5 00	
30.	Paid T. H. Egbert, order of Mrs. Gilmore	9 50	
Oct. 9.	Paid tax on homestead	35 70	20
Dec. 30.	Paid R. W. Condit, order of Mrs. Gilmore	25 00	
		<u>\$4,222 18</u>	<u>\$1,395 73</u>

1875.	1875.		
	Balance receipts over payments	2,826 45	
	Interest at 7 per cent. to 31st December, 1875	197 85	
Jan. 5.	Paid D. C. Runyon, int. on mortgage,		21 00
5.	Paid J. T. Gaylor, order of Mrs. Gilmore		7 50
Mch. 18.	Received from J. L. Gilmore, on acc. of int. to Mrs. G.	100 00	30
	Carried forward		
1875.	Brought forward		
Mch. 20.	Paid Mrs. A. L. Gilmore, note and protest		51 34
20.	Paid Mrs. A. L. Gilmore		48 66
Apl. 8-10.	Paid Mrs. A. L. Gilmore, board, per receipt		185 00
7-12.	Paid Mrs. A. L. Gilmore, board, per receipt		30 00
11-19.	Paid Mrs. A. L. Gilmore, board, per receipt		15 00 40

	May 4. Paid Mrs. A. L. Gilmore, board, per receipt.....		50 00
	29. Paid Mrs. A. L. Gilmore, board, per receipt		50 00
	June 17. Paid Mrs. A. L. Gilmore, int., per receipt		25 00
	July 3. Paid Mrs. A. L. Gilmore, board, per receipt		8 00
	6. Paid Mrs. A. L. Gilmore, board, per receipt		25 00
10	16. Paid Mrs. A. L. Gilmore, board, per receipt		25 00
	15. Received of J. R. Gilmore.....	25 00	
	27. Paid Mrs. A. L. Gilmore.....		25 00
	22. Received from J. R. Gilmore.....	25 00	
	Sept. 16. Received from J. R. Gilmore.....	20 00	
	July 20. Paid A. L. Gilmore, Jr.....		25 00
	Dec. 31. Paid insurance on homestead.....		7 00
	Sept. 18. " " " "		500 00
	18. " " " "		15 00
	Apl. 5. Joseph Gaylord, deed.....	400 00	
	Sept. 20. Solomon D. Lauter.	500 00	
20	Payment omitted.		50 00
		<u>\$4,094 30</u>	<u>\$1,164 00</u>

1876.

1876.

	Balance of receipts over payments, \$2,930 30		
	Interest thereon at 7 per cent. to 31st December, 1876	205 12	
			195 77
	Feb. 4. Received rent of Hughes & Hall..	62 50	
30	5. Paid int. on a mortgage for a year to Nov. 28, 1875.....		42 00
	Paid L. H. Gilmore, per J. R. G...		6 50
	Mch. 18. Received rent from J. Hughes.....	12 50	
	Paid Mrs. Gilmore on acc. of board		12 50
	Apl. 5. Received rent of J. Hughes.....	12 50	
	6. Paid Mrs. Gilmore on acc. of int...		12 50
	May 1. Received rent of Hughes	12 50	
	Paid Mrs. Gilmore on account.....		12 50
	Carried forward.....		

1876.	Brought forward.....		
Aug. 4.	Paid Mrs. Gilmore on account.....		17 90
		<u>\$3,235 42</u>	<u>\$103 70</u>
		103 70	
	Balance due 31st December, 1876..	3,131 72	
	Int. at 7 per cent. to 4th July, 1878,	331 23	
	Int. at 6 per cent. to 18th Oct. 1880,	429 98	
	Due 18th October, 1880,.....	3,892 93	
	Interest to date hereof, 1st October,		
	1883	554 74	10
	Due 1st October, 1883.....	4,447 67	
		<u>\$4,447 67</u>	

W. PATERSON, M. C. C.

SCHEDULE No. 2.

Valuation of lots as appraised by William B. Smith.

Lot No. 2	\$150 00	20
" 3	500 00	
" 4	250 00	
" 5	400 00	
" 6	100 00	
" 7	300 00	
" 8	200 00	
" 9	300 00	
" 10	300 00	
" 11	100 00	
" 14	390 00	
" 15	600 00	
" 16	400 00	30
" 17	250 00	
" 18	150 00	
" 19	100 00	
" 20	100 00	
" 21	300 00	
" 22	392 00	
" 23	150 00	
	<u>\$5,432 00</u>	

W. PATERSON, M. C. C.

V.

ORDER NISI ON REPORT.

IN CHANCERY OF NEW JERSEY.

10 *Between*

 AMELIA L. GILMORE,
Complainant,
and
 GEORGE F. TUTTLE, *et al.*,
Defendants.

 } *Rule Nisi to*
 } *Confirm*
 } *Report.*

Upon reading and filing a report made in this cause by William Paterson, Esq., one of the Masters of this Court, bearing date on the first day of October, eighteen

20 hundred and eighty-three, it is ordered that the said report and all the matters and things therein contained, do stand in all things confirmed, according to the tenor and true meaning thereof, unless the parties interested therein shall, within eight days after service upon them of a copy of this rule, show good cause to the contrary.

Entered on motion on behalf of

C. & R. W. PARKER,

Solicitors of the Complainant.

Dated July 1, 1885.

30

By the Court.

G. S. DURYEE, *Clerk.*

VI.

EXCEPTIONS TO REPORT.

IN CHANCERY OF NEW JERSEY.

10

<p><i>Between</i> AMELIA L. GILMORE, <i>et al.</i>, <i>Complainants,</i> <i>and</i> GEORGE F. TUTTLE, <i>et al.</i>, <i>Defendants.</i></p>	}	<i>On Bill, &c.</i>
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Exceptions taken by the defendant, George F. Tuttle, to the report of William Paterson, Esq., one of the special Masters of this Court, bearing date October 1, 1883, and made by virtue of an order of reference herein, bearing date September 25, 1883. 20

First. For that the said Master, in and by his said report, and in taking and stating his account, has not credited this defendant with the sum of \$3,700, paid by him for a homestead for the use of the complainant, Amelia L. Gilmore, to which credit he was entitled by the final decree herein, which, in this respect, was affirmed by the Court of Errors and Appeals.

30

Second. For that the said Master in and by his said report, and in taking and stating the said account, has not credited this defendant with the sum of \$1,000, proceeds of the De Camp mortgage, paid by him to and for the use of the said Amelia L. Gilmore; to which credit he was entitled by the said final decree, which, in this respect also, was affirmed by the said Appellate Court.

Third. For that the said Master, in and by his said report, and in taking and stating the said account, has not allowed to this defendant the sum of \$874.37, or any 40

sum, for commissions ; to which allowance he was entitled by the said final decree, which, in this respect also, was affirmed by the said Appellate Court.

10 *Fourth.* For that the said Master, in and by his said report, and in the taking and stating of the said account, has charged this defendant with compound interest, or interest upon interest, contrary to the legal rule or method of computation, and has also computed and charged interest against this defendant, before such interest was by law chargeable, and for a longer time than it was chargeable, and without giving credit for payments as of the time when made, and when they should have been credited.

Fifth. For that the said Master, in taking and stating the said account, has erred in the computation of interest, and charged this defendant with an excessive amount of interest, in his various computations.

20 *Sixth.* For that the said Master, in and by his said report, and in taking and stating the said account, has disregarded the decree in this cause, as modified by the Court of Errors and Appeals, especially in charging this defendant, virtually or in effect, with more than \$5,332, as the value of the lands conveyed by this defendant to Amelia Burnet Gilmore, as well as in other respects.

30 In all which particulars the said report of the said Master, as this defendant is advised, is erroneous ; and this defendant appeals therefrom to the judgment of this Honorable Court.

JOHN W. TAYLOR,

Solicitor and of Counsel for the Defendant, Geo. F. Tuttle.

VII.
OPINION OF CHANCELLOR.
IN CHANCERY OF NEW JERSEY

OCTOBER TERM.

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<p style="text-align: center;">AMELIA L. GILMORE. <i>vs.</i> GEORGE F. TUTTLE, TRUSTEE, &c.</p>	}	<i>Opinion.</i>
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Bill for relief. On exceptions to Master's report.

Mr. J. W. TAYLOR, for the exceptions.

Mr. R. WAYNE PARKER, contra.

THE CHANCELLOR: By the decree made in this cause 20
 on the 20th of May, 1880, it was adjudged that the trustee
 was accountable in equity not only for the moneys
 actually received by him, but also for the value of the
 lands conveyed by him, as mentioned in the ninth para-
 graph of the bill; that value to be reckoned at what the
 lands were worth at the time of such conveyance with
 interest thereon from that time. He did not secure
 proper payments for those lands but accepted therefor
 the second mortgages taken by him, which proved worth-
 less. 30

It was also ordered that it be referred to a special Master
 to take and state the accounts of the trustee, and that the
 Master charge the trustee in the account with the value
 of the lands and interest according to that adjudication.
 The lands referred to were lots sold and conveyed by the
 trustee to Amelia B. Gilmore by three deeds, one dated
 May 15th, 1871, for lots numbered from 14 to 22, in-
 cluding both of those numbers; another dated August
 28th, 1871, for lot number 23, and the third also of that
 date, for lots numbered from 2 to 11, including both of 40

those numbers. The consideration mentioned in the first mentioned deed was \$6,472.76. On account and as a part of that price, the trustee obtained a house and lot for the complainant, \$3,700 of the cost of which were paid out of that consideration, and he also received a good mortgage of \$1,000. The rest of the price was lost through the default of the trustee. The Master by his report, which is dated October 18th, 1880, charged the trustee with the sum of \$5,490 as the value of the lots conveyed
10 by the last mentioned deed at the time of its date, May 15th, 1871, instead of the amount \$6,472.76, mentioned in the deed as the consideration, and credited him with the \$3,700 and \$1,000, and as the result charged him with the balance, \$790. He also charged him with \$550 for the value of the lot conveyed by the first mentioned deed of August 28th, 1871, and \$7,700 for the value of the property conveyed by the other deed. These valuations were those which were given by Aaron Quimby, a witness before the Master. The Master
20 adopted the valuations of this witness as to all the property in question. They amounted altogether to \$13,740. The report was, upon exceptions, confirmed on this point. The cause went upon appeal to the Court of Errors and Appeals, which reversed that part of the decree of this Court which established the valuation of the Master, and adopted instead thereof the valuation of William B. Smith, another witness before the Master. By its decree, dated April 17th, 1883, it adjudged that the value of the lands in question at the time of the conveyance thereof was \$5,332, and that the trustee should be
30 charged in his account with that sum as the value of the lands at that time instead of the sum of \$13,740, and that the decree of this Court to the extent that the same charged, or was based upon charging against the trustee more than the sum of \$5,332 as the value of the lands at the time they were conveyed, be reversed. That decree was made the decree of this Court, and another order of reference was made in this Court September 25th, 1883. Under the latter order the Master has restated the account in accordance with the directions of the decree of
40

the Court of Errors and Appeals as he understands them. As to the conveyance of May, 1871, he charges the trustee with nothing, seeing that the trustee received for it \$4,700 (in the house and lot and mortgage), and the valuation according to Smith's estimate, would not be more, but less than that sum, viz: \$2,682. He charges him with the value of the other properties (conveyed by the deeds of August, 1871,) according to Smith's estimate. The trustee excepted to the report on the ground that by the decree of the Court of Errors and Appeals the valuation of the whole of the property, including that conveyed in May, 1871, was to be according to the estimate adopted and fixed by that Court, and his counsel insists that the proper way to state the account under that decree is to charge the trustee with the values according to that estimate and credit him with the \$4,700. It will be seen that this method would charge the trustee with only \$2,682 for the price of a property for which he actually realized \$4,700, and would give him credit on the valuations chargeable against him for the properties conveyed in August for \$2,018 of the purchase money, actually received for the property conveyed in May. I am satisfied that the Court of Errors and Appeals did not intend that the account should be so stated, and unless the decree is so clear and positive in its directions to state the account in that way as to leave no room for discretion in following those directions, I must approve of the method pursued by the Master. It is obviously the duty of this Court to pursue the directions of the appellate tribunal, and it has no right to depart from them. It is laid down that when the House of Lords makes an order containing declarations as to the rights of parties and remits the cause to the Court below, with directions, it is not competent for the Court below, upon the same state of evidence, to give any judgment inconsistent with the declarations and directions of the House of Lords. *Macqueen*, p. 222; *McNeil vs. Cahill*, 2 Bli. N. S., 316. But in the case in hand the question is what are the directions which the appellate tribunal has given? The decree declares that the value of the lands was

\$5,332, and that the trustee should be charged with that sum as the value thereof instead of \$13,740, with which he was charged, and that the decree of this Court, "to the extent that the same charges, or is based upon charging against him more than the sum of \$5,332 as the value of the lands at the time they were conveyed," be reversed. The charges to which it has reference are those made against him in respect to lands which he conveyed, and the price of which has through his
10 fault been wholly or partially lost, and the price fixed by the Court of Errors and Appeals is a measure of damages for the consequences of that fault, and the direction of that Court is that he be charged with such damages at a different and much lower rate than that adopted by this Court. The Master in his report had charged him with \$790, for the difference between the value of the land conveyed in May and the \$4,700 received on account of that price. The Appellate Court adjudged (in substance) that that charge which was based upon the
20 Quimby estimate, was erroneous to the extent of \$790, and that as to the land conveyed by the other conveyances, the charges were erroneous to the extent of the difference between them and the Smith estimate. The question is whether this Court is bound in the execution of the decree to regard the directions of the decree as absolute, and to be followed implicitly and literally without any manner of discrimination, or whether they are to be regarded as directions to guide this Court in establishing the trustee's liability. I have no doubt that the
30 latter is the true view. The exception under consideration will therefore be overruled.

The trustee also excepts upon the ground that the Master has not allowed him commissions. This objection is well taken. The exception will be allowed.

No other exception besides the two above considered was insisted upon at the hearing. There will be no costs of the exceptions awarded to either side.

VIII.
 DECREE ON EXCEPTIONS.
 IN CHANCERY OF NEW JERSEY.

Between AMELIA L. GILMORE, Complainant, and GEORGE F. TUTTLE, TRUSTEE, AND OTHERS, Defendants.	}	<i>On Bill, &c. Amended Or- der as to Exceptions to Master's Re- port.</i>	10
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An order having been made in this cause, dated the 25th day of September, 1883, by which it was referred to William Paterson, special Master, to restate the accounts of George F. Tuttle, trustee, so far as respects the amounts 20 charged against him for sales of land in violation of his trust in accordance with the principles settled in the decree of the Court of Errors and Appeals and the remittitur therefrom, and the report of said special Master having been filed, dated the first day of October, 1883, restating said account, and rule *nisi* having been taken to confirm the same and duly served and exceptions having been filed thereto by said George F. Tuttle, trustee, and the same having been argued by Richard Wayne Parker, of counsel with the complainant, and John W. Taylor, Esq., of 30 counsel with defendant, George F. Tuttle, trustee,

It is, on the 18th day of May, eighteen hundred and eighty-six, by THEODORE RUNYON, Chancellor, ordered, adjudged and decreed that the fourth and fifth exceptions be and the same are overruled, the same not having been insisted upon at the argument; and the Court having considered the first and second exceptions in connection with the sixth exception, whereby it was alleged that the said Master in taking and stating said account has dis- 40 regarded said decree in this cause and has charged against

the defendant more than the value of the lands conveyed by said trustee as aforesaid, and the Court being of opinion that the said first, second and sixth exceptions are not well taken, it is ordered that the said first, second and sixth exceptions be likewise and the same are hereby overruled; and as to the third exception, whereby it is objected that the said Master has not allowed the sum of \$874.37, or any sum for commissions, to which allowance he was entitled by the final decree herein, dated 10 28th day of July, 1882, it is ordered that the said commissions should be allowed said trustee and deducted from the sum with which the said trustee is chargeable, as ordered by said final decree, and that the said exception be sustained; and it is further ordered, adjudged and decreed that the costs of said exceptions be allowed either party, and that said report be, except as corrected by the allowance of said commissions, in all things confirmed.

And it further appearing from the inspection of said 20 report that the amount which the said George F. Tuttle was chargeable on the eighteenth day of October, 1880, being the date of the previous report in this case, referred to in the final decree herein, was the sum of \$3,892.93, and that from said sum, according to said final decree herein, there is to be deducted for said commissions the sum of \$874.37, leaving a balance for which he is accountable, of \$3,018.56, with interest from October 18th, 1880, it is further ordered, adjudged and decreed by the Chancellor that the said George F. Tuttle, trustee, 30 is chargeable in this cause in the accounting between him and the trust with the said sum of \$3,018.56, with interest from October 18, 1880, and the costs of this suit to and including said final decree, the homestead mentioned in said former decree, the unsold balance of lands held in trust, having since then been transferred to Alexander Grant, the new trustee appointed in his stead.

And it is further ordered, adjudged and decreed that said George F. Tuttle do pay the said costs and interest from the date of said former decree, to the complainant, 40 or her solicitor, (less the taxed costs of said Tuttle on his

appeal to the Court of Errors and Appeals) and that he do pay to the clerk of this Court the said sum of three thousand and eighteen dollars and fifty-six cents, with interest from the 18th day of October, 1880, forthwith upon the service of a copy of this decree, and that on failure to do so the complainants have leave to apply to this Court for execution or process of contempt according to law or other proper relief ; and all equities as to the allowance of complainant's counsel fees herein and to the distribution of the said moneys under said final decree, 10 and as to the direction and control of the trust, are hereby reserved.

THEODORE RUNYON, C.

IX.

NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

10	<p style="margin: 0;"><i>Between</i></p> <p style="margin: 0;">AMELIA L. GILMORE, <i>et al.</i>,</p> <p style="margin: 0; text-align: center;"><i>Complainants,</i></p> <p style="margin: 0; text-align: center;"><i>and</i></p> <p style="margin: 0;">GEORGE F. TUTTLE, <i>et al.</i>,</p> <p style="margin: 0; text-align: center;"><i>Defendants.</i></p>	}	<p style="margin: 0;"><i>On Bill, &c.</i></p>
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The defendant, George F. Tuttle, hereby appeals to the Court of Errors and Appeals from so much of the decree made by this Court in the above stated cause, and bearing date the eighteenth day of May, A.D. 1886, as overrules the first, second and sixth exceptions to the Master's report therein mentioned, and as decrees that

20 the said George F. Tuttle is chargeable in this cause, in the accounting between him and the trust, with the sum of \$3,018.56, with interest from October 18, 1880, and the costs of this suit, to and including the final decree, and that he do pay the said costs and interest from the date of the said former decree to the complainant or her solicitor; and that he do pay to the clerk of this Court the said sum of \$3,018.56, with interest from October 18, 1880, forthwith, upon the service of the copy of the said

30 decree, and that, on failure to do so, the complainants have leave to apply to this Court for execution or process of contempt, according to law, or other proper relief.

Dated May 28, 1886.

JOHN W. TAYLOR,
Solicitor and of Counsel for the defendant,
GEORGE F. TUTTLE.

I conceive that there is good cause for the above appeal.

JOHN W. TAYLOR,
Of Counsel with defendant, George F. Tuttle.

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X.

PETITION OF APPEAL.

Court of Errors and Appeals.

<i>Between</i> GEORGE F. TUTTLE, <i>Appellant,</i> <i>and</i> AMELIA L. GILMORE, <i>et al.,</i> <i>Appellees.</i>	}	On Appeal from Chancery.	10
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To the Honorable, the Court of Errors and Appeals in the last resort in all causes :

The petition of George F. Tuttle, the appellant in the above stated cause, respectfully shows that he finds himself aggrieved by so much of the decree made in the Court of Chancery, by his Honor THEODORE RUNYON, Chancellor of New Jersey, bearing date the eighteenth day of May, A.D. 1886, in a cause wherein Amelia L. Gilmore and others were complainants, and your petitioner and others were defendants, in this respect, to wit : that the said decree orders, adjudges, and decrees that the first, second and sixth exceptions to the Master's report therein mentioned, be overruled, and that your petitioner is chargeable in said cause, in the accounting between him and the trust, with the sum of three thousand and eighteen dollars and fifty-six cents, with interest from October 18, 1880, and the costs of the said suit, to and including the final decree ; and that he pay the said costs and interest from the date of the former decree in said cause, to the complainant, or her solicitor, and that he pay to the clerk of this Court the said sum of three thousand and eighteen dollars and fifty-six cents, with interest from October 18, 1880, forthwith upon the service of a copy of the decree hereby appealed from, and

that on failure to do so, the complainant have leave to apply to this Court for execution or process of contempt, according to law or other proper relief.

And your petitioner appeals from so much of the said decree as orders, adjudges and decrees as aforesaid, upon the ground that the same is erroneous in the respects aforesaid, for that the same should have sustained the said first, second and sixth exceptions to the said Master's report, and should not have adjudged and decreed
10 your petitioner to be chargeable with any sum whatever, in the said cause, in the accounting between him and the said trust, or to pay any sum whatever, nor permitted the said complainant to apply for process of execution, or of contempt, to enforce the payment of any sum whatever.

Your petitioner, therefore, prays that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside, and for nothing holden; and that your petitioner may have such relief in the premises
20 as to this Honorable Court shall seem meet.

JOHN W. TAYLOR,
Solicitor and of Counsel for Appellant.