

having complete control of the parties and of the subject-matter of the controversy.

"It seeks to annul a sale of lands made by virtue of a decree of the Cecil court, sitting as a court of equity, in a cause depending between the same parties; to effect the distribution of the proceeds of the sale, to enjoin the defendant from making any disposition of the lands purchased by him; to disturb his possession, to invalidate his title, and to have the property resold.

"This is a direct and positive interference with the rightful authority of the State court. If there was error in the proceedings of the court a review can be had in the appellate tribunals of the State. If, as is charged, the decree is sought to be perverted, and made the medium of consummating a wrong, then the court on petition or supplemental bill can prevent it."

These views, we think, dispose of the present case, and require an affirmance of the decree of the court below. It is

*So ordered.*

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DURANT v. ESSEX COMPANY.

1. The Circuit Court, when its decree is affirmed and the mandate filed there, must record the order of this court and proceed with the execution of the decree.
2. For all the purposes of the case, a judgment of affirmance here by a divided court is as effectual as if all the judges had concurred therein.

APPEAL from the Circuit Court of the United States for the District of Massachusetts.

The facts are stated in the opinion of the court.

*Mr. E. F. Hodges* for the appellant.

The court declined to hear counsel for the appellee.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This case shows that on or about the 11th of October, 1847, the present appellant filed his bill in equity in the court below

against certain defendants for certain relief. After pleadings, proofs, and hearing, that court dismissed his bill absolutely. Appeal was thereupon taken in due form to this court. After one hearing, we ordered a reargument. Upon the reargument, the decree below was affirmed "by a divided court." When our mandate went down, the present appellant, in May, 1858, asked the Circuit Court that he might have leave to discontinue his suit, or if that could not be done, that his "bill might be dismissed without prejudice." All these several requests were refused, and the court simply ordered execution on the decree which had been affirmed.

Afterwards, the appellant filed a new bill in the Circuit Court to obtain the same relief as in the old suit, but setting up what he called new matter. To this bill the former decree was pleaded in bar, and the plea sustained by the Circuit Court, because the first bill had been dismissed absolutely. From that decree an appeal was taken to this court, and at the December Term, 1868, in *Durant v. Essex Company* (7 Wall. 107), we decided that the decree, absolute in its terms, dismissing the bill on the merits, was a final determination of the controversy, and constituted a bar to any further litigation of the same subject between the same parties.

Thereupon on the 29th of June, 1874, the appellant filed a petition in the Circuit Court setting up these facts and his newly discovered matter, and asked that the decree affirmed here in 1858, might "be revoked or so modified that his bill of complaint be dismissed without prejudice to his further proceeding at law or equity." This petition was denied, and to reverse that order the present appeal was taken.

Waiving all questions as to the right of appeal from such an order, we are clearly of the opinion that the Circuit Court could do no otherwise than it did. On a mandate from this court affirming a decree, the Circuit Court can only record our order and proceed with the execution of its own decree as affirmed. It has no power to rescind or modify what we have established. Our judgment by a divided court is just as much our judgment for all the purposes of the case in hand as if it had been unanimous. The result of the appeal to us was an affirmance of what had been done below. After the appeal had been taken, the

power of the court below over its own decree was gone. All it could do after that was to obey our mandate when it was sent down. We affirmed its decree and ordered execution. We might have ordered a modification so as to declare that the dismissal should be without prejudice. We did not do so. The Circuit Court had no power after that to do what we might have done and did not do.

*Decree affirmed.*

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SHAW v. RAILROAD COMPANY.

1. Statutes are not to be construed as altering the common law, or as making any innovation therein, further than their words import.
2. Although a statute makes bills of lading negotiable by indorsement and delivery, it does not follow that all the consequences incident to the indorsement of bills and notes before maturity ensue or are intended to result from such negotiation.
3. The rule that a *bona fide* purchaser of a lost or stolen bill or note indorsed in blank or payable to bearer is not bound to look beyond the instrument, has no application to the case of a lost or stolen bill of lading.
4. The purchaser of a bill of lading who has reason to believe that his vendor was not the owner thereof, or that it was held to secure an outstanding draft, is not a *bona fide* purchaser, nor entitled to hold the merchandise covered by the bill against its true owner.
5. Where the judgment below was entered properly, this court will not remand the case for a new trial because of the verbal mistake of the clerk in using a superfluous word in entering the verdict. As the verdict was amendable in the court below, the amendment will be regarded as made.

ERROR to the Circuit Court of the United States for the Eastern District of Pennsylvania.

This is an action of replevin brought by the Merchants' National Bank of St. Louis, Missouri, against Shaw & Esrey, of Philadelphia, Pennsylvania, to recover possession of certain cotton, marked "W D I." One hundred and forty-one bales thereof having been taken possession of by the marshal were returned to the defendants upon their entering into the proper bond. On Nov. 11, 1874, Norvell & Co., of St. Louis, sold to the bank their draft for \$11,947.43 on M. Kuhn & Brother, of