THOMAS, appellant, *v.* GABRIELLE BROCKENBROUGH, JOHN HARVIE, EDWIN HARVIE, JACQUELINE HARVIE, JULIA ANN HARVIE, heirs-at-law and devisees of JOHN HARVIE, respondents.

Bill of review.—Limitation.

Although bills of review are not strictly within the statute of limitations, yet courts of equity will adopt the analogy of the statute, in prescribing the time within which they shall be brought.[1]

Appeals in equity causes being limited by the judiciary acts of 1789, § 22, and of 1803, § 2, to five years after the decree, the same period of limitation is applied to bills of review.[2]

Quære? Whether a bill of review, founded upon matter discovered since the decree is also barred by the lapse of five years?

It is in the discretion of the court, to grant leave to file a bill of review for that cause.

APPEAL from the Circuit Court of Kentucky. The appellant, Thomas, filed in that court, at the November term 1818, a bill to review and reverse a final decree of the same court, pronounced at the May term 1810, by which the plaintiff in the bill of review, and defendant in the original suit, was decreed to convey *to the heirs of John Harvie, the plaintiffs in *147] the original suit, a certain tract of land, which formed the subject of controversy in that suit.

The bill of review, after stating the substance of the original bill, which was filed by John Harvie, and the bill of revivor, after his death, in the name of the present respondents, in whose favor the decree was passed, assigned the following errors in the said decree, as causes for its reversal. 1. That the entry of James Clark, under whom the said John Harvie claimed the land in dispute, was void for uncertainty. 2. That before the final decree was passed, the said Harvie died, leaving a will, by which he devised the land in controversy to his sons, Edwin and Jacqueline, two of the plaintiffs in the bill of revivor, of which will the plaintiff was wholly ignorant, until long after the final decree was entered. 3. That the said Edwin Harvie died previous to the said decree, and his right in the said land descended to his heirs-at-law, John and Lewis, who were no parties to the said suit, of which facts the plaintiff was wholly ignorant, until long after the decree complained of.

To this bill of review, the defendants pleaded in bar, the decree passed and enrolled in the original suit, and the prosecution by the plaintiff, Thomas, of a writ of error to the supreme court to reverse the same, which was dismissed, and then demurred to so much of the bill as sought to review or reverse the said decree. Upon argument of the plea and demurrer, the court below *dismissed the bill of review, and the cause was brought, *148] by appeal, to this court.

February 10th. *Talbot*, for the appellant, argued upon the merits of the original cause, to invalidate the title of the plaintiff in that cause, founded upon the entry of Clark; and also upon the other errors assigned in the bill of review. He insisted, that there was no period of limitation to bills of review, by the act of congress, and that, in this case, the bill of review being

[1] See Kennedy *v.* Georgia State Bank, 8 How. 586; Whiting *v.* United States Bank, 13 Pet. 6; Lupton *v.* Janney, Id. 381; Massie *v.* Graham, 3 McLean 41.

[2] Neill's Appeal, 93 Penn. St. 177.

founded upon newly-discovered evidence, and having been permitted by the court below, in its discretion, to be filed, it must be determined by the error in the original decree. In England, it is usual to recite all the important facts of the cause in the decree. In this country, this is not done, and therefore, the pleadings, exhibits and proofs must be resorted to, in order to discover the errors apparent upon the face of the original decree.

Bibb, contrà, insisted, that the first error assigned upon the merits of the original cause, was no ground for a bill of review. The errors in law must be apparent on the face of the decree. If a fact be mistaken at the hearing, and in the decretal order, it must be rectified by a rehearing, which rehearing cannot be after decree enrolled. *Combs* v. *Proud*, Cas. Ch. 54; 3 Bl. Com. 454. The other errors assigned did not prejudice the appellant, nor had he any interest in correcting them. But the conclusive *objection to the whole proceeding was, that here is an attempt, by a bill of [*149
review, to revise the original decree, after the appeal is barred by the limitation of five years, prescribed in the acts of congress. In England, writs of error are limited by statute to twenty years, and the courts of equity have limited appeals and bills of review to the same period, by analogy to that statute. Stat. 10 & 11 Wm. III., c. 14, 3 Stat. at Large 2043; Viner's Abr. tit. Limitation, 105; *Smith* v. *Clay*, Ambl. 645; but much better reported in note to *Deloraine* v. *Browne*, 3 Bro. C. C. 639.

February 18th, 1825. WASHINGTON, Justice, delivered the opinion of the the court, and after stating the case, proceeded as follows:—The first error assigned in the bill of review, involves the merits of the original cause, and was intended to induce a re-examination of the title of the plaintiffs in that cause, the validity of which had been established by the decree. But previous to an investigation of that subject, a preliminary question has been suggested by the counsel for the appellee, which the court is called upon to consider. The record shows, that the order of the court, permitting the bill to be filed, was granted eight years subsequent to the final decree in the original cause; and the question to be decided is, whether this remedy was not barred by length of time?

It must be admitted, that bills of review are not strictly within any act of limitations prescribed by congress; but it is unquestionable, that *courts of equity, acting upon the principle, that *laches* and neglect [150
ought to be discountenanced, and that in cases of stale demands, its aid ought not to be afforded, have always interposed some limitation to suits brought in those courts. It is stated by Lord CAMDEN, in the case of *Smith* v. *Clay* (Ambl. 645, 3 Bro. C. C. 639 note), "that as the court of equity has no legislative authority, it could not property define the time of bar, by a positive rule; but that, as often as parliament had limited the time of actions and remedies to a certain period, in legal proceedings, the court of chancery adopted that rule, and applied it to similar cases in equity." Upon this principle it is, that an account for rents and profits, in a common case, is not carried beyond six years, or a redemption of mortgaged premises allowed, after twenty years' possession by the mortgagee, or a bill of review entertained, after twenty years, by analogy to the statute which limits writs of error to that period.

These principles seem to apply, with peculiar strength, to bills of review, in the courts of the United States, from the circumstance, that congress has thought proper to limit the time within which appeals may be taken in equity causes, thus creating an analogy between the two remedies, by appeal, and a bill of review, so apparent, that the court is constrained to consider the latter as necessarily comprehended within the equity of the provision respecting the former. For it is obvious, that if a bill of review to reverse
*151] a decree, on the ground of error apparent *on its face, may be filed at any period of time beyond the five years limited for an appeal, it will follow, that an original decree may, in effect, be brought before the supreme court for re-examination, after the period prescribed by law for an immediate appeal from such decree, by appealing from the decree of the circuit court, upon a bill of review. In short, the party complaining of the original decree would, in this way, be permitted to do indirectly, what the act of congress has prohibited him from doing directly.

Whether a bill of review, founded upon matter discovered since the decree, is, in like manner, barred by the lapse of five years after such decree, is a question which need not be decided in the present case, since we are all of opinion, that it is in the discretion of the court to grant leave to file a bill of review for that cause, and that such leave ought not to be granted, in a case where it appears that the plaintiff is not aggrieved by the decree, on account of the error so assigned; or, that being granted, the court ought to dismiss the bill, where no other error is assigned.

In this case, the court below decided, in the original cause, that the title to the land in controversy was vested in the heirs of John Harvie, and decreed the appellant to convey the same to them. If Thomas, then, had no title to the land, of what consequence was it to him, that the conveyance was
*152] decreed to be made to all the complainants *in that cause, as being the heirs of Harvie, rather than to two of them, who, he alleged, were entitled to the land as devisees? If they did not complain of the decree (and that they did not, is proved by their plea and demurrer to the bill of review), and if the plaintiff in this bill was not injured by it, the court is at a loss to conceive, upon what legal or equitable ground, that decree could have been reversed for the errors growing out of the after-discovered evidence. These observations apply equally to the second and third errors assigned.

Decree affirmed, with costs.