

By the decree of the 9th of May, 1851, the bill, so far as it relates to, or sought to recover for, or in respect of this note, was dismissed; though as to other matters, not then decided, it was retained, with liberty to the complainant to amend her bill by making a new party. And by the order of the 9th of February, 1852, sending the cause to the Auditor for an account, he was expressly restricted in stating the accounts to the questions left open and undecided by the opinion and decree of May, 1851.

With regard to this note, therefore, there has been a final adjudication upon this bill; and I cannot see how it could be amended, for the purpose of raising the question of the applicability of the note, as an asset in the hands of the defendant, to the payment of the pecuniary legacies.

If, upon the original bill, the complainant's title to the note in question, as a gift from her father to her, had been the only question presented, and the Court, entertaining the opinion which has been pronounced, had dismissed the bill absolutely, there could of course be no doubt that an amendment under such circumstances could not be made. The bill being gone, there would be nothing to amend; and if any remedy remained to the party, other than by way of appeal, it would have been by filing a new bill. Does it make any difference that the bill was retained for the purpose of litigating other matters embraced in it, altogether unconnected with it, and distinct from the claim to this note? In my opinion, it does not. The bill, with reference to this note, is no longer before the Court; nor could any question with regard to it be litigated here after the decree of May, 1851. The complainant's second exception, therefore, which objects to the report of the Auditor, because he has not charged the defendant Davis with the sum of \$1,139 08, the proportion of said note which would be applicable to the payment of the complainant's legacy of \$5,000, if said note is to be treated as an asset for the payment of the legacies, as shown by the account C, must be overruled.

The account A, shows the sum which Mrs. Hitch is entitled