

It is admitted by the defendants, that the decree of the 4th of August last is for a greater amount than it ought to have been given for; and that it has awarded to them *three hundred and ninety-two dollars and ninety cents* more than was actually due, and more than they had any right whatever to claim or recover. In this respect, therefore, it confessedly requires revision and correction. It is a decree by default, and not upon the merits. But *Scott* avers upon oath, that he has a good defence against the *whole* claim of the defendants, which he prays to have let in.(*r*) And it is not alleged by his opponents, that they have lost, or been deprived of any means of sustaining their pretensions.(*s*) In short, under all the peculiar circumstances of this case, it appears to be fit and proper, that the decree of the 4th of August last should be revoked; but it must be upon the terms of paying all costs.(*t*)

Whereupon, it is *decreed*, that the decree of this court, passed and signed on the 4th day of August, 1825, in the case wherein *Thomas Burch*, administrator *de bonis non* of *Jesse Burch*, *Fielder Burch*, and others, are plaintiffs, against *William Scott*, defendant, together with all the proceedings in the said suit subsequent to the fourth day of July term, 1824, be and the same are hereby revoked, rescinded, and annulled. And it is further *decreed*, that the said *William Scott* do forthwith pay unto the complainants all the costs which they may have incurred in the prosecution of the said suit subsequent to the 4th day of July term, 1824, to be taxed by the register. And it is further *decreed*, that the answer of the said *Scott*, purporting to have been received and filed on the 7th of December, 1825, in the said case, be and the same is hereby allowed to be filed as his answer in the said suit, subject to all legal exceptions thereto.

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From this decree the plaintiffs in the original bill appealed, and the Court of Appeals having reversed this decree without qualification, (1 G. & J. 393,) the plaintiffs again sued out a *feri facias* upon the decree of the 4th of August, 1825, on which execution, it is understood, that the plaintiffs, as before, endorsed a credit for so much as they admitted had been awarded to them more than was due.

(*r*) *Stanard v. Rogers*, 4 Hen. & Mun. 498; *Erwin v. Vint*, 6 Mun. 267.—  
 (*s*) *Wooster v. Woodhull*, 1 John. C. C. 539.—(*t*) November, 1787, ch. 9, s. 6.