

with the amount of the stock of the Savings Institution with reference to the banks and *cestui que trusts* in remainder, yet, as regards Mrs. Jones, he is not to be charged with it. The effect of this would be, not that Mrs. Jones would be charged with it, but that she would lose her interest or dividends on that amount. The decree could not affect her husband's estate, as the petition is filed by her, and revived by her husband and herself in her own right and not as administratrix, and nothing more is decreed than that Wayman was not responsible.

But how is she bound by that decree? It was passed on the 23d of October, 1846. The decree in the present case, was passed on the 15th of November, 1845, from which an appeal was entered by Mrs. Jones on the 11th of February, 1846. On that appeal the court decided that Wayman, though complainant, may be required to account as defendant, and would be answerable for this stock, or not, according to the further proof to be taken. Such of course ought to have been the decree of the Chancery Court, and all those interested in this part of the trust fund being parties in this case, and it being perfectly competent for the court to decide all the interests in the case, the decree, as it is called, of the 23d of October, 1846, or rather the *order*, could not be properly passed, and must be superseded by the final decree or order in this case.

But is that decree or order conclusive upon this court, even confining the question to that case? Here is a trust fund invested by the court and in the hands of the trustee. By some means the trust fund is abstracted, and one of the *cestui que trusts* alleging that the trustee has obtained stocks and money from the person so abstracting it, by way of reimbursement, files a *petition in that case*, which is the usual mode of proceeding, calling upon the trustee of the court to account for these funds, and the Chancellor passes an order directing the account to be stated, and specifying, as is supposed, to some extent, the responsibility incurred by the trustee. There is no formal proceeding by original bill and answer. The Auditor states an account accordingly, but recommending a suspension of final action in the case until a decision is had in another case, where