

It is, therefore, clear, that the plaintiff in this case can have no relief against these defendants, even if he has adopted the mode in which, if the merits were with him, he could be entitled. I am by no means sure, however, that he has adopted the proper proceeding. The money which was awarded to Mrs. Forsyth resulted from proceedings in the case of Glenn and Stewart, (the present defendants) against her. The audit referred to, and upon which this complainant now seeks to recover, was made in that case, and I am strongly inclined to think, that instead of filing an independent bill, the regular and proper course was by petition in that case. I can see no reason why a new suit should be brought, when it was certainly in the power of the court, in a way much more summary, and much less expensive, to enforce the order in the first case, unless sufficient grounds against it could be shown.

But, although the plaintiff in this case can have no decree, the defendants cannot have one for their over payment. The bill was not filed for an account, but for a specific sum of money, nor was the order passed by this court on the 26th of April, 1847, in the nature of a decree to account, which would make both parties actors. The object of that order was to ascertain by a report from the Auditor, whether the defendants had paid or extinguished this particular claim, and not that the parties should account with each other. The bill, therefore, in this case will be dismissed with costs.

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PHILIP C. FRIEZE and HENRY F. FRIEZE for Complainant.  
JOHN GLENN and DAVID STEWART for Defendants.

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[No appeal was taken in this case.]