

**Fourniquet Vs. Perkins**

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**SooperKanoon Citation :** [sooperkanoon.com/80444](http://sooperkanoon.com/80444)

**Court :** US Supreme Court

**Decided On :** 1853

**Appeal No. :** 57 U.S. 82

**Appellant :** Fourniquet

**Respondent :** Perkins

**Judgement :**

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**Fourniquet v. Perkins**

**57 U.S. (16 How.) 82**

*APPEAL FROM THE CIRCUIT COURT OF THE UNITED*

*STATES FOR THE EASTERN DISTRICT OF LOUISIANA*

## **SYLLABUS**

Where a case in equity was referred to a master, which came again before the court upon exceptions to the master's report, the court had a right to change its opinion from that which it had expressed upon the interlocutory order and to

dismiss the bill. All previous interlocutory orders were open for revision.

The decree of dismissal was right in itself, because it conformed to a decision of this Court in a branch of the same case, which decision was given in the interval between the interlocutory order and final decree of the circuit court.

The controversy between the parties had been at several different times, in various shapes before this Court, as will be seen by reference to [47 U. S. 6](#) How. 206, [48 U. S. 7](#) How. 160, and [55 U. S. 14](#) How. 313.

The case in 6 Howard was this:

The circuit court had decreed, on the 12th of April, 1847, that a community of acquests and gains had existed between Perkins and wife, during the marriage, and that the present appellants, representing Mrs. Perkins, were entitled to an account. Accordingly, the matter was referred to a master to ascertain the landed property, and to divide it and report an account. This was held by this Court to be an interlocutory order only, and not a final decree, and the appeal was dismissed. [47 U. S. 6](#) How. 208. The mandate sent from this Court, after reciting the decree or order appealed from, and the reference to a master, concluded thus:

"You therefore are hereby commanded that such further proceedings be had in said cause as, according to right and justice and the laws of the United States, ought to be had, the said appeal notwithstanding."

Under this mandate, the master took up the reference and made a report awarding a large sum of money and a large amount of land to Fourniquet and wife and Ewing and wife. Both parties filed exceptions to the report. These exceptions were before the court, upon argument, in February and March, 1852.

In the meantime, *viz.*, at January term, 1849, the case of *Fourniquet v. Perkins* was decided by this Court as reported in [48 U. S. 7](#) How. 160. The circuit court appeared to consider this case as deciding the points involved in a different way from that in which it had itself decided them when referring the case to a master to state an account. Upon hearing the exceptions, it therefore reversed the former

decree and dismissed the bill.

The complainants appealed to this Court.

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It may be proper to mention that whilst this appeal was pending, another branch of the case reached this Court, which is reported in [55 U. S. 14](#) How. 313.

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MR. CHIEF JUSTICE TANEY delivered the opinion of the Court.

This case came before the Court some years ago on an appeal from an interlocutory order of the circuit court, which stated that the appellants were entitled to recover certain claims set out in their bill, and directed an account to be taken by the master. It is reported [47 U. S. 6](#) How. 206. The appeal was dismissed upon the ground that an appeal would not lie from an interlocutory order, and the case was remanded to the court below with directions to proceed to a final decree. Upon receiving this mandate, the circuit court proceeded to take the account upon the principles stated in its interlocutory order, and when the report of the master came in, exceptions were taken to it on both sides. At the argument of these exceptions, it appears that the court reconsidered the opinion it had expressed on the merits in the interlocutory order, and believing that opinion to be incorrect, dismissed the complainants' bill. The case now before us is an appeal from that decree.

The decree is undoubtedly right, for it conforms to the opinions expressed by this Court in relation to the matters now in controversy in the case between Fourniquet and wife and the present appellee, reported [48 U. S. 7](#) How. 160, and again in the case between these appellants and Perkins, the appellee, in the case reported in [55 U. S. 14](#) How. 313. It is unnecessary to state here the facts in the present case, or the matters in dispute, as they are fully set out in the cases referred to, and especially in the one last mentioned. For in that case the parties and the

matters in dispute were the same with those now before the Court.

The counsel for the appellants however objects to the decree of dismissal, because it was made, at the argument upon the exceptions to the master's report, and is contrary to the opinion on the merits expressed by the court in its interlocutory order.

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But this objection cannot be maintained. The case was at final hearing at the argument upon the exceptions, and all of the previous interlocutory orders in relation to the merits were open for revision, and under the control of the court. This Court so decided when the former appeal hereinbefore mentioned, was dismissed for want of jurisdiction. And if the court below, upon further reflection or examination, changed its opinion, after passing the order, or found that it was in conflict with the decision of this Court, it was its duty to correct the error. The circuit court on this occasion has properly done so, and the decree of dismissal must be

*Affirmed with costs.*

## **ORDER**

This cause came on to be heard, on the transcript of the record, from the Circuit Court of the United States for the Eastern district of Louisiana, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said circuit court in this cause be and the same is hereby affirmed with costs.