CHEAP COLUMN.

[Advertisements under this head will be charged ten cents per line for each insertion.]

WANTS.

WANTED—To exchange several eligible city lots for improved city or Edgefield property. Apply to C. & J. at this office. dec8-tf

FOR SALE.

FOR SALE—A large lot of Bar Furniture, Looking Glasses, Saloon and Hotel Ware, Staple and Fancy Queensware, at SPIRE & SUFFIS, Sumpena on Bridge Corner.

FOR RENT.

FOR RENT—Russell street, Edgefield, a neat Frame House with four rooms, kitchen, servant's room, two cisterns, stable and shade trees. Apply to JOHNSON & SMITH, or GEO. DURY, at Union street. dec23-2t

FOR RENT—Two very desirable Brick Cottages—the first and second beyond the Trimble High School, on South Market street, at the terminus of the South Nashville Street Railroad. Apply to Dr. J. W. MADDIN, No. 2 South Cherry street dec21-tf

FOR RENT—The lower half of dwelling No. 182 North Summer s eet, consisting of 6 rooms and bath room. References required. Apply to H. APPLE, either on the premises or at Furman & Co's, No. 1 Hicks' Block. dec20 tf

FOR RENT FOR 1871—The place three miles on the Hillsboro pike, known as the Lynn Wood Nursery; good house, containing six rooms, kitchen and servant's room, and 22 acres of garden. Apply to C. E. H. MARTIN, Agent, No. 50 South High street. dec8-tf

FOR RENT.—Five Office and Sleeping Rooms to rent; well lighted and ventilated—over Hicks China Hall, 31 North College street, with water and water closet on same floor. Possession immediately. Apply to HICKS, HOUSTON & CO. dec16-1w

BOARD.

BOARDING—Two or three Families and several Day Boarders can be accommodated with pleasant rooms and excellent board at No. 21 South Cherry street. References given and required. dec18-1w*

UNION AND AMERICAN

CHRISTMAS CAROL.

BY Z. G. HOLLAND.

There's a song in the air!
There's a star in the sky!
There's a mother's deep prayer
And a baby's low cry!
And the star rains its fire while the Beautiful sing,
For the manger of Bethlehem cradles a King!

There's a tumult of joy
O'er the wonderful birth,
For the Virgin's sweet boy
Is the Lord of the earth,
Ay! the star rains its fire and the Beautiful sing,
For the manger of Bethlehem cradles a King!

In the light of that star
Lo the ages impelled;
And that song from afar
Has swept o'er the world.
Every heart to rejoice, the Beautiful sing
In the homes of the nations that Jesus is King.

We rejoice in the light,
And we echo the song
That comes down through the night
From the heavenly throng.
Ay! we shout to the lovely evangel they bring,
And we greet in His cradle our Saviour and King.

FARM AND GARDEN.

WHEN TO SOW BLUE GRASS SEED

At a meeting of the Farmers' Club at Lexington, Ky., in response to an inquiry "How and when to sow Kentucky Blue Grass seed, in order to procure a good stand in the shortest time," Mr. Tipton thought it best to sow in early spring, on fall grain. If mixed with clover, it will require time, not less than three years, to secure a good stand, as the clover will retard its growth; it is not as liable to freeze out as other grass. Dr. W. D. Gay prefers to sow in spring on small grain, and if is is dry enough, harrowing will benefit both.

CATTLE FEEDING IN WINTER.

The *American Farmer* says: The question is sometimes raised as to whether or not cattle designed for farm work should, or should not, be fed during the winter season on concentrated food, such as corn meal, oil cake and the like. As an illustration on the subject, on a limited scale, we will state a simple fact in the management of working oxen during a single winter. There were two yoke of these about the same age and physical power. Both were stabled during the night, and subjected to equal labor during the day. One yoke had, besides a plentiful supply of good hay, a peck of Indian meal during the twenty-four hours. The other yoke, in addition to the hay, had a feed of pumpkins, cut up as long as the stock held out, which was to about the close of December. After that, hay alone.

In the spring, those to which meal was given were in fine condition—in fact, fit for the slaughterhouse—while the others were in what is called fair working order. When the spring plowing was commenced, there was found a marked difference in the operative force of the two teams. The yoke fed on corn meal, did not lack strength, but were devoid of the endurance which characterized the hay and pumpkin fed animals. In a word, the corn fed ones wilted down under the influence of the spring heat, while the others seemed indifferent to it.

HOW TO HAVE A GOOD SOIL.

The question of deep plowing which we had supposed definitely settled long since, is again being brought forward, and the discussions are assuming a very spirited style. Subsoil plows which grew rapidly in favor some years since, have almost entirely disappeared, though faith in deep plowing has taken a stronger hold than ever. Of course the depth of plowing should be in proportion to the depth of soil. It will not do to plow twelve inches deep where the surface soil is only six. This may be done in the course of time, but not at once. To make a good deep soil, the progress downward should be gradual. Let a proper portion of the subsoil be brought to the surface and exposed to the action of the sun, rain, wind and frost, then add the manures necessary to render it fertile. By pursuing this plan for successive years, a fertile soil can be made—one that will resist the effects of severe drought, and be fitted also for the successful cultivation of all ordinary crops. By this means the mineral constituents of the subsoil become thoroughly intermixed with the soil of the surface, which in consequence of oft-repeated shallow plowings, has been depleted of them. To make a good soil by this method, the plowing should be done in the fall, in order that the newly turned up subsoil may be subjected to the ameliorating influences of the winter's freezing and thawing. But after all this is done, it will be found that good crops cannot be produced unless there is a liberal application of manure. Plow deep and manure generously, and you will have a good soil and a bountiful yield.

WINTER EFFECTS ON SUMMER DROUGHTS

Western horticulturists have suffered much from a protracted drought this summer, and it may not be amiss to remind them, that the consequences will not be over with the first rain. It is well known now that the vitality of plants is affected by untoward circumstances pretty much as animals are. A half starved man, or one affected with a long, enervating summer's heat will have his constitution so weakened that he falls an easy prey to the first enemy. So a plant which grows on poor soil has not the power of storing up latent heat, as it has nothing to store from, and is easily killed by a slight frost, while under other circumstances it would endure very hard weather. Again a plant in very wet ground is incapable of properly organizing its food in summer, and it also gives way under a slight cold. The effect of great summer heat is just the same. The great evaporation takes all the moisture, and none is left for the elaboration of food. A plant which suffers for want of water in summer easily dies in the winter time.

These points are not merely theoretical; but are explanations of facs which have actually occurred. It will, therefore, be well for those who have rare plants or trees which they prize, to look ahead at these probabilities.

One of the best things to be done, as a precautionary measure, is to top dress with a little manure any tree likely to suffer. Manure not only feeds roots, but encourages their production; and this will increase the opporunities of the plant to lay up the necessary heat-giving material pet, before the growing principal ceases its active work. Beyond this a little protection from cold winds, where the valuable specimen are in exposed places, will be very useful. It may not be out of place to notice that with the discovery of these facts about the causes of winter destruction comes a new view of the value of thermometrical observations. At one time it was supposed that the marking of a thermometer would indicate exactly the degree of cold a plant would stand. It was so with animals. But we know not that we often suffer more from heat when the thermomis at eighty-five degrees than when at ninety five degrees, and some will suffer more at one temperature than others will. This is owing to the varying nature of other elements as well as mere heat, and the varying degrees of vitality in individuals. The thermometer, therefore, is of little value in determining what a plant will stand, and the long tables of plants and degrees people used to take so much trouble to make up, are now of little more use than waste paper.

Here is the axiom to remember: the hardiness of plants is dependent on their vitality, and this is again dependent on their ability to maintain heat under favorable circumstances.—*Gardener's Monthly.*

THE OHIO EVERBEARING RASPBERRY.

"What's in a name? That which we call a rose,
By any other name would smell as sweet."

Although a change of name could not affect the perfume of the rose, or alter the destiny of a Montague, I am very sure were the Ohio Everbearing Raspberry burdened with a less pretentious name, it would soon become more widely disseminated than it is at present.

The habit it has of bearing moderate crops during the latter part of summer, has caused it to be designated "Everbearing," thus placing it in rather disreputable company in the catalogues. The everbearing varieties have not generally given satisfaction to profit-seeking cultivators, and it is unfortunate that one of the most hardy and prolific raspberries ever introduced, should be thus encumbered with a name which ascribes to it a quality of questionable utility. Had it been known simply as the "Ohio," and been planted and cultivated for one crop early in the summer, as with the Doolittle, Philadelphia and others, it would have made for itself a reputation second to no other variety. We have grown it for some fifteen years past, and have repeatedly had it to yield at the rate of one hundred bushels per acre, and then carry a moderate crop later in the summer on the current season's growth. The plants are set in rows seven feet apart and three feet distant in the rows. In the spring the canes are cut back to within about three and a half feet of the ground and secured to horizontal poles. When the fruit ripens, for one to pass along the rows and see how black they are with berries, he could hardly deem it possible for them to bear a larger crop. They have often been the admiration of visitors at such times. We grow them not only because they are "everbearers," but chiefly for the first crop, and are not afraid to pit them against any variety before the public for the abundance of fruit they produce during the regular raspberry season—and then we have the products of the summer and autumn months extra.—*Country Gentleman.*

ANDY JOHNSON AT HOME.

A Picture for the English Aristocracy—Johnson's Views of Grant and His Message—The Senatorial Question—His Long Residence in Greeneville—His Office and its Contents.

Correspondence of the Cincinnati Commercial.

GREENEVILLE, Dec. 18.—This morning, in a stroll about town, I passed Johnson's modest residence, a small two-story brick, very plain inside and out, and hardly what we might expect an ex-President of the United States to live in, considering the chances that class have, if they know how to manage a gift enterprise, to provide themselves with much better. But A. J. did not carry on the gift enterprise and lottery business while he occupied the President's chair, refusing all presents and "testimonials of regard" that were offered to him. The late Gen. Thomas also did the same way while occupying a public station, much to the wonderment of politicians in harness, who are in the habit of taking everything they can get their hands on. How many thousand dollars' worth of presents Andy Johnson, plain Andy Johnson from the mountains of Tennessee, refused while in public life, I do not know, but it was a good many, so many that had he gobbled them as fast as offered, as some men do, he would not now be living in a home no better than thousands of well-to do mechanics occupy. Passing along the main street of the village, past the few stores and business houses, down a slight declivity, one comes to the home of the only living ex-President of the United States, with the exception of ex-President Fillmore. The house, as I said before is a modest two-story brick. It stands right upon the street, there being no front yard whatever. From the pavement to the parlor 'tis but a step. In front there is a door, and two windows in the lower story and three windows above. These are covered with white blinds or shutters. There are not a pair of green blinds in Greeneville, for some unaccountable reason. The name may have something to do with it. From this unpretending front an L runs back about thirty feet, and that is all there is of Johnson's house. Greeneville is nothing but a village of a thousand or twelve hundred inhabitants, not wealthy by any means, yet there are half a dozen or more finer houses than the one occupied by this world-renowned man.

Ringing the door bell, a servant appeared and ushered me into the parlor, a small room to the left of the hall. It was plainly furnished, its chief attractions being the books and portraits on the shelves and walls. There was Lincoln, Washington, Jackson, and Johnson, the latter looking as natural as life. She went away and returned in a moment, saying Mr. Johnson was out; perhaps I would find him at Mr. Brown's store, as he usually walked up there every morning. Going up the street to the store, I entered and found the ex-President seated alone by the stove. In a few moments some country woman, surrounded by several little ragged boys, came in to barter butter and eggs for sugar and calico. Mr. Brown and his clerk, young Johnson, appeared to wait upon them, count the eggs and weigh the butter. Here was a picture, which if truly represented on canvas, would astonish the good people of England, who draw such fine distinctions in blood. It aptly illustrated manners and customs in our free and independent Republic—manners and customs somewhat different from those in other parts of the world. Here was a son and son-in-law of a President of the United States with their sleeves rolled up, counting eggs, weighing butter, and giving in exchange coffee and calico. Verily, our country is good and peculiar, without being in the least gloomy.

GRANT AND HIS MESSAGE.

I presume it is generally known that Johnson does not like Grant, and that Grant does not waste any love on Johnson. The unpleasantness arose some time ago, when Johnson accused Grant of prevaricating. He sticks to it that he caught him in a falsehood, and thinks that he will tell an untruth as quick as a truth to subserve his ends.

I asked him what he thought of Grant's message.

"Well," replied he, "it's about the weakest document that was ever under the necessity of being called a State paper. In fact, it is no State paper. It is as weak as water. There is not a point in it. You can't tell half the time what he is driving at, and it is doubtful if he knows himself. I see that a great many Republican journals are condemning it. The facts is, they are tired of Grant. The intelligent men of the party don't know what to do with him. It would gratify them much if he would resign, but he won't. So far from resigning, he's working and intriguing for a second term. He will never get it. He is no more fit for a President than a goose. He has got no ability—nothing but a little low cunning. His cunning is of poor sort; it is mean cunning. He never had an original idea in his life. He is an insignificant little fellow, a bundle of personal piques, petty spites and prejudices. He is as selfish as the days are long. He used the highest office in the gift of the people to advance his private ends and those of his family, and intrigue for a second term. He knows a little something about horses, but has not brains enough to make a first class horse jockey, if turned out to the business, although that is about all he is fit for. If we are to have a horse jockey for the highest office in the land, we ought to have a good one.

"Grant's coming to the surface is the result of an accident; nay, it is the accident of an accident. You may search history from the foundation of the world to the present, and you will not find a case like his—a man who rose solely by the power of accident. In the boiling cauldron of war the scum rises to the top. In the bubbling off he came up from the bottom, and run off, as scum always will, or we should never have heard of him. By a series of accidents he rose to the command of the army. He was the creature of a peculiar combination of circumstances.

"He rose to the top in the general turmoil and throwing up. The rebellion would have been suppressed without him. He was an incident to the struggle—like a baggage-wagon, for example. A baggage-wagon had a part to perform, but without the war sentiment and patriotism in the North, it could have done nothing. Neither could Grant. Everything was furnished him that he wanted. His armies largely outnumbered the Rebels. Every engine of war was placed at his disposal. The rebellion went down while he was in command. If anybody else had been in command at the time it would have been the same, although the result would most likely have been brought about with less loss of life. His Wilderness campaign was a perfect massacre. His road was paved with skulls and washed with blood. His conduct in regard to the exchange of prisoners was inexcusable. In his correspondence on the subject he let one sentence drop which illustrates his character. A ray of light passing through a crevice will often light up a whole room. So it is with the character of a man. We frequently get a clear insight into his heart, as it were, by a single sentence that he may write or speak. He is utterly remorseless. Objecting to exchanging prisoners with the Rebels because our men in their hands were weak and emaciated, while the Rebel prisoners were strong and able to go right into the army and fight us!

"Grant, sir, is a small man; he is little every way you take him. He is a bundle of small, contemptible prejudices. He does not rise to the dignity of a man. He lacks courage, as well as discrimination. He thinks he is making tools of certain politicians, when, in truth, they are making a tool of him. But he does not know it; he is to be pitied."

THE SENATORIAL QUESTION.

Having thus mildly given his views about Grant, I asked him about the Senatorial question that is now being agitated in the papers, and if he thought Cooper would get his seat.

"Well, it's hard to tell; but, the Senate being the sole judge of these matters, I should not be surprised if they admitted him."

"But, according to the State Constitution, is he not ineligible?"

"Yes, but there is a higher power than the State Constitution to determine these questions. The Constitution of the United States says that the Senate shall be the judge of the qualifications of its own members. No State can add any additional qualifications. This is the point in Cooper's case. The law says that the Legislature of each State which shall be chosen next preceding the expiration of the time for which their Senator was elected to represent them in Congress, shall choose his successor. This is done so as to have Senators selected without too long a time intervening between the period that the Legislature was elected and the time that the newly-elected Senator is to take his seat. As I look at it, the Legislature elected last August is the one to elect Fowler's successor. They will have been elected seven or eight months before Fowler's term expires, and as I understand the law, they are the proper ones to elect a Senator. As it is now, here is a Legislature elected in 1869 selecting a Senator to take his seat in 1871. This will defeat the intent of the law, at least, which is that as little time as possible shall elapse from the election of a Legislature that selects a Senator until that Senator takes his seat. But a good deal can be said on both sides of the question. Why they should accuse me of agitating the matter, I don't know, as I have had very little to say about it lately. And if I did agitate the subject, what difference did it make? Have not I or any other citizen a right to do so if I choose? Free speech is a cardinal principle in our Republic. But come," said the ex-President, rising, "let's walk down to the house; the heat from this stove has a tendency to give me the headache."

HOW LONG HE HAS RESIDED IN GREENEVILLE.

As we walked out into the street, I asked him how long he had been a resident of Greeneville.

"I came here in 1826," he replied; "let me see, that has been forty-four years ago. Yes, I have been here forty-four years."

"Greeneville is quite an old town, than?"

"Yes, it is one of the oldest in the State. It improves but slowly."

"You came over those mountains there from North Carolina when you first came here, did you not," I inquired, pointing in the direction of the road which led toward the snow-capped summits of the Smoky Mountains.

"No," said he, pointing to the northeast, "I came into Greeneville from that direction."

I was about to say something further concerning his first appearance in Greeneville when he stopped in front of a small wood colored building on the street above his house, saying that it was his office, and inviting me in. It was more a store-room than an office. The building was divided into two apartments, both literally filled with books, newspapers files, pamphlets, manuscripts, scrap-books, maps and almost every sort of document that could be imagined. There were about half a dozen large volumes of telegrams alone. The files of letters were absolutely prodigious. Long rows of ledger-looking books were marked "Executive Department." In addition to the piles of books and documents on the tables, shelves and on the floor, there were about a dozen large boxes that had never been opened. One of these boxes, about five feet high, he said contained the files of four leading dailies during the time he was President. Upon one shelf, and standing in a row, were about half a dozen "Lives" of the ex-President, some of them quite handsome and imposing looking volumes. Some of the books were scattered about in confusion, and others had been carefully sorted and shelved. Pointing to those on the shelves, he said: "My son Bob arranged these before he died. It was his intention to straighten and assort all these books and documents, but he died just after commencing the war."

HIS OFFICE AND ITS CONTENTS.

To my expression of surprise at the number and variety of his books and collections, he replied that he would have had a great many more, but during "the late immortal war," as he called it, the Rebels destroyed all his early collections. He had left his office full of valuable books and documents, and when he returned after the war very few remained. Even his old tailor shears that he prized highly for having used them so long, were taken with the rest. Some few of his books have been returned to him by mail and express from various quarters, where they had been taken by the soldiers. But his old tailor shears and sign, "A Johnson, Tailor," have never turned up.

The adjoining building is also his, and filled like the firstone with *Congressional Globes* and almost every sort of political books that a man could think of. Here were large boxes of documents that have never been opened. Every book, paper pamphlet, letter and document that comes into Mr. Johnson's hands, he preserves.

If old documents are dangerous, he has a nitro-glycerine mine at hand, well charged. These collections are of inestimable value, composing the completest history of the last eventful ten years in any one man's possession on the continent. In looking over the list of the country's great, is there any who have been more prominent in public affairs for the past twelve years than Andrew Johnson? Not one, and none have had the opportunity to make collections of current history that he has. I was surprised to notice that he did not keep the doors locked to these massive piles of lore, though perhaps he does at night.

Greeneville is a place of "steady habits," however, and the collections are probably in no danger. After all, what is there in these that would benefit a thief? He might slip in and gather up an armful and when daylight come find that he had half a hundred copies of the resolutions of '98 and Johnson's farewell address to the people of the United States. Such stealing would not pay; the more a man stole the worse he would be off.

Passing on down to the house, we entered the sitting-room, which, like the parlor, was plainly but tastefully furnished. Portraits upon the walls, books and papers upon the shelves and tables, were evidences that Mr. Johnson is a man of cultivated tastes, even though he may have "sold out the Republican party," as it is claimed that he did. But he sold it *sans recourse*, which speaks well for his business ability.

In speaking of the present political condition of the country, Mr. Johnson said that both parties were in a state of disintegration, and that sooner or later new parties would form. "The young men of the country," said he, "will soon take things in hand; the old set have about played out."

SUPREME COURT DECISIONS.

September Term — Knoxville, 1870.

Joseph B. Heiskell, Attorney-General and Reporter.

No. 163.

Z. L. Burson vs. J. H. Dosser and G. W. Telford, executors of the will of Ewing McClure, dec'd.

BILL OF REVIEW—*Error Apparent.*—Error apparent in a decree is such error of law as appears, assuming the facts to be such as are stated in the decree, not errors of fact apparent from the proofs.

VENDOR'S LIEN—*Waiver by Taking Security.*—Whether a vendor intends to waive his lien by taking personal security is a question of fact. The law presumes the waiver, but this may be rebutted by proof.

SAME—*Error in Decision as to*—Error in deciding upon the fact of waiver is not error apparent on the face of a decree.

BILL OF REVIEW—*For Error of Fact—Leave.*—It seems that the propriety of the leave granted to file a bill of review for errors of fact can only be tested here by a motion to dismiss in the court below, and by making the evidence on which the leave is based, part of the record.

SAME—*New Matter—How Stated.*—New matter must be so stated, in a bill of review, as to enable the court to determine upon demurrer whether or not when produced it will be controlling in the cause, or be merely cumulative, not necessarily changing the result, and whether the party has been guilty of any negligence in failing to discover and produce it before.

SAME—*Cumulative Evidence.*—Cumulative evidence, upon matters to which proof has been taken on the former trial, is not a sufficient ground to sustain a bill of review.

FROM WASHINGTON.

Appeal from the Chancery Court at Jonesboro, S. J. W. Lucky, Ch.

R. M. Barton for complainant, on the effect of registering note, cited Brogan vs. Savage, 5 Sneed 689; Galt vs. Dibbrell, 11 Yer. 147; Montgomery vs. Hobson, Meigs 448; Harrison vs. Wade, 3 Cold 505. Vendor's lien waived, Marshall vs. Christmas, 3 Hum. 616; Campbell vs. Baldwin, 2 Hum 248. Vendor estopped, Thompson vs. Davidson, 3 Head. 384.

Motion to dismiss necessary—Dance vs. McGreger, 5 Hum. 433. Demurrer is waived by answer. Code §§ 4.318, 4,319, 4,321; Kirkman & Ellis vs. Snodgrass, 3 Head. 370.

Wm. H. Maxwell, for defendants, insisted, that error of fact was not matter for bill of review. Citing Easten vs. Dickenson, 3 Sneed, 400.

Burden of proof on vendee to show waiver by taking security. 2 Story, Eq. §1,226. Notice of lien. King vs. Travis, 4 Hay, 280, 285; Taylor vs. Hunter and Searcy, 5 Hum. 569, 570.

Bill of review. Bacon's Ordinance, quoted 1 Meigs, Dig. p. 273. Rules of Pr. No. 32. Act of 1835, c. 20, ss. 15, 16, Code 3,121. Bledsoe vs. Carr, 10 Yer., 56-7. Eaton vs. Dickinson, 3 Sneed, 397. Cumulative proof. Frazier vs. Sypert, 5 Sneed, 100, 104.

Diligence. Young vs. Forgey & Henderson, 4 Hay, 189, 190.

OPINION.

This is a bill of review. The original bill was filed by Ewing McClure, in his life time, against Burson, Henry R. Lutz, A. A. Broyles, Oscola Sitgreaves and John Andes. The object of the bill was to assert a vendor's lien upon a tract of land for unpaid purchase money, upon the following state of facts: About the year 1858 or 1859, said McClure sold the land in question to Henry R. Lutz, upon a credit extending for several years, and gave to said Lutz an ordinary title bond, retaining in himself the legal title as security for the purchase money.

Lutz having paid part of the purchase money, sold part of the land to Adam Andes and one Holms, and McClure executed a deed for this part of the land, and as to this there is no controversy. On the 2d of August, 1861, Lutz sold the balance of the land to John Andes, and McClure made to Andes a deed for the same, and took from him a new note for the unpaid purchase money, which note was executed also by Lutz. It is clearly shown that in this transaction it was the intention of the parties, that McClure's lien for the payment of this note should remain upon the land, this would constitute notice of the lien to third parties. On the 2d of May, 1863, McClure accepted another new note in the place of the one last mentioned, executed by A. A. Broyles, O. Sitgreaves and John Andes.

Andes had loaned to Broyles & Sitgreaves a sum of money, for which they, at his instance, executed this note, directly to McClure. On the 8th of July, 1863, Andes conveyed the land to Burson.

After McClure had accepted the note of the 2d of May, 1863, but whether before or after the date of Burson's deed, does not appear, McClure, at the instance and in the presence of Burson, wrote or had written across the face of note on the Register's books "Satisfied," and signed his name thereto. It was conceded that Burson before he bought or paid for the land, had notice of the unpaid purchase money, to McClure, and also that he knew that the note upon the Register's books was *satisfied*, by the execution of the note of the 2d of May, 1863. And the question raised by the pleadings in the cause, was, whether or not McClure waived or abandoned his lien upon the land by accepting the new note of the 2d of May, 1863, or marking the previous note on the Register's books "satisfied" in the presence of Burson. Upon this issue the testimony of two witnesses was taken. Upon the part of McClure, Elbert Taylor proved that he was the register, and was in his office when McClure and Burson came in to have the note on the books marked satisfied. At first McClure refused to sign this on the record, and they both went out, but afterwards came back. McClure refused to sign the record because he was afraid he would thereby lose his lien upon the land. Burson told him that the new note (the note of 2d of May, 1863,) would hold his lien upon the land.

McClure asked witness's opinion, and witness thought as Burson did, and upon this witness wrote the word "satisfied," and McClure signed his name on the books. Burson was very anxious and McClure reluctant, to make this transaction. For Burson A. A. Broyles proved that Andes loaned the firm of Broyles & Sitgreaves $1,830.00, for which they with Andes executed to McClure the note of 2d of May, 1863, in the place of the one McClure then held upon Andes for the balance of the land. His understanding was, that McClure on receiving this note, was to release his lien upon the land, so as to enable Andes to sell it, but he got this understanding from Andes. This was in substance the entire case. McClure died pending the suit, and the same was revived in the name of his personal representatives, and on the 27th of November, 1867, a final decree was rendered in their favor, declaring their lien upon the land. Here upon this bill of review was filed, to review said decree, both for errors apparent upon the face of the decree, and also for newly discovered matter. The errors which this bill charges are apparent on the decree, are: 1. That the decree erroneously assumes that by the registration of the note of the 2d of August, 1861, McClure had a valid lien upon the land, when such was not its effect; and because it is apparent that by accepting the new note of the 2d of May, 1863, and marking the former one satisfied, McClure's lien was lost, and that the court in refusing to so hold, committed an error of law, and this error "is error apparent." The executors of McClure answered, insisting upon matters of demurrer. The action of the court upon a demurrer to a bill of review *for errors apparent upon the face of the record*, necessarily disposes of the whole case. Whether or not the error appears must be determined from the bill and the original record, and cannot be changed by an answer to the bill of review, or proof. We think it clear that this is not a case of error apparent upon the face of the record. It has been held by this court, that for the purpose of ascertaining whether or not error of this character exists, the pleadings and decree may be looked to, but not the proof at large. Eaton vs. Dickenson, 3 Sneed 397. But even if we look to the proof, the error is not apparent. By "error apparent" is not meant that the decree is merely erroneous, and improper, because based upon erroneous conclusions of fact, drawn from the evidence, but a decree that is erroneous in point of law upon the facts assumed. In the language of Lord Eldon, "There is a distinction between 'error in the decree' and 'error apparent'—error apparent does not apply to a merely erroneous judgment. "The question," he says, "is not whether the cause is well decided, but whether the decree is right or wrong upon the face of it?" and gives as an instance "An infant not having a day in court to show cause," etc. 3 Daniel's Ch. Pr., 1,728.

As we have seen the question in the original cause was whether or not McClure held a lien upon the land for unpaid purchase money, or whether by the act of accepting the new note of the 2d of May, 1863, and marking the former one satisfied, he waived or abandoned this lien. Whether or not a vender who sells and conveys his land intends to waive his lien by taking personal security is a question of fact upon which evidence may be heard. Ordinarily the law presumes that the lien is retained, but when personal security is taken, the rule is changed, and the law presumes that the vendor intended to waive his lien and rely upon his personal security; but this presumption may be rebutted by proof, showing that such was not the object and intention of the parties. Campbell vs. Baldwin, 2 Hum., 248; Marshall vs. Christmas, 3 Hum, 616; 2 Head, 128; 3 Head, 384.

It was not assumed as a matter of law, by the decree in question, that the lien of the complainant McClure existed by mere force of his note upon the register's book. It is clear that causing the note to be registered could not give it the effect intended. The facts can only be looked to as evidence of the intention of the parties. The question before the court was one of fact, to be determined upon the evidence, upon which the court was of opinion that the lien of McClure was retained upon the land for the balance of purchase money due, and that this lien was not waived by accepting the note of the 2d of May, 1863, or marking the former note satisfied. Nor was Burson induced to believe that the lien was thus waived.

If the Chancellor erred in this, the error consisted in drawing erroneous conclusions of fact from the evidence and circumstances in the record. An error of this character if one existed is not "error apparent" upon the face of the record for which a bill of review will lie. And besides, we should have arrived at the same conclusion the Chancellor did. This bill is also filed upon the ground of newly discovered matter, and leave of court to file the bill upon this ground was obtained. The question whether the court acted properly in granting this leave, is probably not before us—for the reason that no motion was made to dismiss, and the affidavits upon which the leave was granted (if any were made) are not made part of the record. The allegation of new matter, in the bill, is this, "the facts which your orator believes he can certainly establish by credible and reliable testimony, are that before your orator had taken a deed for the land, but after he had contracted verbally with said Andes for the purchase thereof, that the said McClure learning that said Andes was about to convey said land to your orator, and your orator learning that said McClure was the vendor originally to said Andes, distinctly agreed with and informed your orator that the purchase money for said land sold and conveyed to said Andes, and by him to your orator, was satisfied and that said land was free from incumbrance, and upon this assurance your orator completed the purchase and paid in full for the land. This newly discovered testimony could not have been produced upon the hearing in the original cause, because it was not then known to your orator, that these facts were known to the witness by whom he is now able to prove them." To this the defendants insist upon a demurrer, upon the ground that the newly discovered testimony is not stated with sufficient particularity, and that the names of the witnesses by whom the facts can be proved should have been given. It seems well settled that the affidavits upon which leave is asked to file a bill of review, of this character should state with *particularity* the newly discovered testimony. How the new matter should be stated *in the bill* seems not to be so well settled.

We are of opinion that the "new matter" should be so stated as to enable the Court to determine upon a demurrer, whether or not the newly discovered testimony, when produced, will be of such a character as will make it controlling in the cause, or whether it will be merely cumulative and such as will not necessarily change the result, and so that the Court may also determine whether, from the nature of the new matter, the party has been guilty of any negligence in not discovering and producing the evidence upon the first trial. In Livingston vs. Hubbs, 3 J. C. R., Chancellor Kent thought that the new evidence must not be a mere accumulation of witnesses to the same fact, but some stringent written evidence or newly discovered papers. Other authorities are to the same effect, and it is said that when testimony of witnesses is admitted to establish the new matter, it should be done with great caution, as tending to open the door to perjury, Story Eq. Pl. § 415, note 1. See also Frazier vs. Sypert, 5 Sneed, 100.

Furthermore, where the new matter is from its nature such as that complainant, with proper diligence, might have had it upon former trial, no relief will be granted upon it, Young vs. Forgey, 4 Haywood, 189, 190. In that case the principal witnesses by whom the complainant proposed to establish the new matter were his neighbors and one his brother. The Court held that this showed such negligence upon his part, as that he was not entitled to the benefit of the evidence upon a bill of review. The allegation of newly discovered testimony in this cause, amounts to no more than an averment, that he can establish, that McClure had admitted to him, that his purchase money was satisfied, and that he distinctly waived his lien, upon the land for unpaid purchase money. This as we have seen was the proposition controverted in the original cause. The bill does not state the nature of the newly discovered testimony, by which this proposition is to be established, except that he can establish the first by credible and reliable witnesses, in other words it is an averment that upon another hearing he can obtain other witnesses to testify in his behalf upon the question controverted in the original cause and upon which testimony was then taken. That this new testimony is merely cumulative is evident and whether it would be sufficiently strong to change the result could not be determined from the bill, but only upon consideration of the additional testimony when taken and considered with the other evidence in the original cause. If this be a good ground for a bill of review, there would probably be but few seriously contested cases, where grounds equally strong might not be presented.

Parties after a trial, and after discovering the ground upon which they failed, would too often discover that upon another trial they could maintain their side of the contest, with more evidence, and greater skill—it would open the door to endless frauds and perjuries.

We think the demurrer should have been sustained and the bill dismissed. This is the more evident, when we consider the new discovered testimony which was taken in the cause. The principal witness by whom complainant, attempts to make out the newly discovered facts, is John Andes from whom he bought the land and who bought from McClure, and who of all others was cognizant of the facts, as the complainant must have well known, as he states in his answer to the original bill, that Andes procured McClure to release his lien. His failure to procure the testimony of Andes upon the former hearing, was such negligence as should not be excused. Without discussing the testimony offered in support of the bill of review, it clearly appears to be of merely a cumulative character, and we are by no means satisfied that taken in connection with the evidence and facts in the original cause, it changes the result.

The Chancelor dismissed the bill and we affirm his decree.

R. McFARLAND,
Special Judge.

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