

operate as a decree binding his interests in like manner as if it had been passed directly against him. For it is now established, that if a bill filed by a mortgagor for redemption, is dismissed, the money not being paid at the time specified in the decree for redemption, that operates as a foreclosure; and is equivalent to a decree for a foreclosure.<sup>(e)</sup> Or there may be a decree against both parties, as where the contest is as to some private right of property, and it appears from the proofs, that the title is in neither, but in the State, both parties may be perpetually enjoined from using the property to the prejudice of the public.<sup>(f)</sup>

In such cases there can be no danger of surprise, or want of opportunity to adduce proof; because the indirect, inverted, or constructive decree, is confined to that subject alone, which the parties themselves have, by their pleadings, spread before the court. Here the bill and answer disclose the whole matter in dispute relative to the promise of the plaintiff, as fully as it could be done by a cross-bill. The defendant not only sets out and relies upon the promise of the plaintiff, but attempts to sustain the deed of the 15th of June, upon the ground of its being a mere fulfilment of that promise. Thus representing the promise as the original contract. This allegation of the defendant has been put in issue as a material part of the subject in controversy; and like every other part of the matter in issue, it may, without the unnecessary circuitry and expense of a cross-bill, be met by such a decree as justice requires, either in favour of, or against the plaintiff.<sup>(g)</sup>

Here again, however, we are met by another obstacle, arising from the present unsound intellectual condition of the plaintiff. And that too, whether the decree in her favour be upon terms; or it be in part against her. But a change in the mental condition of a contracting party, by his becoming afterwards a lunatic, certainly ought not to release him from his liability. And it has accordingly been held, that the rights of the parties remain unchanged by such an act of God. The only difficulty is how to come at the remedy. If the legal estate is vested in trustees, a court of equity ought to decree a performance; but if it be vested in the lunatic himself, that, it was formerly held, might be an insuperable obstacle to any adequate relief here, because this court could by its ordinary powers

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<sup>(e)</sup> *Stuart v. Worrall*, 1 Bro. C. C. 581; *The Bishop of Winchester v. Paine*, 11 Ves. 199.—<sup>(f)</sup> *Penn v. Ld. Baltimore*, 1 Ves. 454; *Barclay v. Russell*, 3 Ves. 436; *Rex v. Leigh*, 4 Burr. 2146.—<sup>(g)</sup> *Harding v. Handy*, 11 Wheat. 120; *Stewart v. Mechanics and Farmers Bank*, 19 John. 505.