

except to any allowance to the complainants of any part of the profits of the estate which the defendants Walter and Kitty claim under the will of their grandfather Duckett, and the appointment by their father William Bowie, as stated in the proceedings; because the said Walter and Kitty are entitled to claim the same, and will hold the same, under the will of their grandfather; and will hold the same absolutely. The will of William Bowie, their father does give them the same, and could not, and it is contended does not subject it to any incumbrances, charges, or conditions.

BLAND, C., 28th June, 1830.—Having disposed of the previously argued cases, I this day opened the bundle of papers of this case, which was argued on the 1st instant, and find that there are several reports and papers not marked filed, which I take it for granted the parties deem important, and wish to have considered as a part of the proceedings in this case.

Upon which I would observe, that it has been the regular course of this Court during the Provincial government, and thence down to the present time, to mark as filed all pleadings, exhibits and papers, more especially the reports from the regular or any special auditor, as of the day on which they are lodged in or returned to the Chancery office. All bills, except such as pray for an injunction * to stay waste or proceedings at law, are required, by a statute passed in the year 1705, to be filed before a sub- **617** pœna can be issued. 4 Ann. c. 16, s. 22; *Kitty's Rep.* 245;(e) And all other pleadings must be put upon file before they can be noticed; and can only be taken off the file by the express allowance or direction of the Court. *Beam's Orders*, 168, 240; *Curzon v. De La Zouch*, 1 *Swan*. 185. So long ago as the year 1692, by a rule of the English Court of Chancery, which has been ever since followed here, every report of a master or auditor is required to be filed within four days after it is signed, or at least before any proceedings are had thereon. *Beam's Orders*, 293; *Eyles v. Ward*, 2 *P. Will.* 517. And all depositions, exhibits and documents, intended to be used, in any way, must be filed before they can be regarded as a part of the proceedings, or in any manner noticed by the Court. *Beam's Orders*, 46, 110.(f) This course is in all

(e) 1714, PER CURIA.—Ordered and Ruled, that all bills filed in the Chancery office, be filed before subpœna issue, according to the Statute of the Fourth and Fifth of Queen Anne, in such case made.—*Chancery Proceedings*, lib. P. L. fol. 84.

(f) HANSON, C., 11th February, 1793.—Ordered, that hereafter, no subpœna issue on any bill or petition referring to any deed, writing or paper, as an exhibit, and praying that the same may be taken as part of the bill, until such deed, writing or paper be actually exhibited and filed. N. B.—If a bill refer to an exhibit which is not filed, there can be no grievance in denying a