enrolled. Most clearly such a bill cannot be resorted to in this case.

A bill of review, properly so-called, lies against those who were parties to the original bill, and against them only; and must be either for error apparent on the face of the decree, or for some new matter. 1 *Mont. Dig.* 330; 2 *Mad. Chan.* 537. But before a bill of review, for newly discovered matter, can be filed, the party must petition for leave to do so; setting forth the new matter, strongly sustaining his statement by affidavits; upon which the leave of the Court is granted. In this case there has been no petition, setting forth newly discovered matter, nor any leave given to file such a bill. This bill, therefore, can, in no respect whatever, be considered as a bill of review, grounded on the discovery of new matter.

A bill of review for error apparent on the face of the decree, may be filed without asking, or obtaining the leave of the Court; and it may be brought by either of the parties to the original bill alone; or it may be filed by a person not a party to the original decree, but whose rights are injured by it. Such is the case now before this Court. The bill of these plaintiffs has this character; and no more.

This bill has yet another aspect. It alleges, that the plaintiffs, one of whom was a party to the original suit, had a good and available defence; that all of them should have been made parties; that they have, all of them, an interest which they will be able to maintain and prove; and that the decree of the 4th of August last was obtained by surprise, for a greater amount than was actually
* due; or owing to a kind of negligence for which they are
not at all blamable, or for which they may, at least, be ex- **123**
cused. Upon these grounds they pray to have the decree opened and the cause re-heard. According to the English authorities, if the enrolment of a decree be obtained by surprise, or irregularly, it may be opened; provided, the application be made within a reasonable time. And where the merits of the case had not been entered into, an enrolled decree has been set aside upon special circumstances, notwithstanding the proceedings were strictly regular. For a Court of equity will make every effort, within its power, to reach the merits of the case, and have justice done. *Kemp* v. *Squire*, 1 *Ves.* 206; 2 *Mad. Chan.* 465.

This bill, then, divested of all extraneous matter, may be regarded in three distinct characters: first, as an original bill, to have the decree of the 4th of August last reversed on the ground of fraud, because it injuriously affects the interests of some of these complainants who were not parties to it; secondly, as a bill of review for error apparent on the face of the decree; and thirdly, as a bill, grounded on the peculiar circumstances, asking to have the decree by default set aside, and the case re-heard upon the merits.