

was, that the Chancellor required a bond with approved surety, to be filed before he imposed the restriction or injunction, expressed in the order of the 16th of November last. *Mitf. Pl. 89. (h)*

If, on considering this bill in its third character, there should be found sufficient cause for opening the decree, and having the case re-heard upon its merits, it will be most advantageous to all parties, that it should be done now: And it will be unnecessary to inquire, and express an opinion, whether the three characters of this bill * are not incompatible, particularly as no objection
126 to it has been made on that ground; or whether the decree has been obtained by fraud or not; or is erroneous upon its face. The decree of the 4th of August last, now complained of, was obtained in that suit by the default of the defendant, in not filing his answer within the time prescribed by the rules of the Court. This apparent negligence the present plaintiffs, by their bill, have endeavored to account for, to justify, or to excuse. And whether they have done so or not, is the matter now to be ascertained; if they have, this decree must be opened.

The decree was signed as of July Term; and, as has been observed before, all decrees and orders of the Court being held entirely subject to its control during the term, if an answer had come in at any time previous to the close of that term, the decree by default would have been set aside, and the defence let in. (i) No decree

(h) *CARROLL v. PARRAN.*—February, 1733.—Bill of review—*subpoena* issued.—Upon motion of the defendant's counsel, that the bill be dismissed—ordered, that the said bill be dismissed with costs; leave not being given either by petition or motion to file such bill of review.

Daniel Dulany, on behalf of Charles Carroll, moves the Court, that he may have leave to file a bill of review against Parran and that a bond with good security, payable to John Parran, may be lodged in Court by the said Carroll to stay execution of the same decree.—Ordered, that a bill of review be filed, and that no execution issue upon the former decree.

Upon motion of Samuel Young, of counsel with the defendant,—Ordered, that he have leave given to answer until next Court.—*Chancery Records, Lib. I. R. No. 2, pages 543, 643.*

(i) When this opinion was delivered there were, as it appears there had always been, four regular terms of this Court, in each year, for the return of process, &c. But the continuance of the sittings, which in this and all other similar cases, is spoken of as the term, was irregular and indefinite. When it was presumed, that all the cases, ready for hearing, had been called up; the sittings, or as they have been most usually called, the terms, were closed, by a memorandum to that effect entered upon the docket, by order of the Chancellor. This was attended with inconvenience; for although the Court of Chancery has terms, it is not, in the sense of the common law, a term Court; but is always open, (1 *Rep. Ca. Chan. Earl of Oxford's Case*, 6; *Crowley's Case*, 2 *Swan*. 11.) I therefore deemed it proper, that the rules might be better understood and enforced, and for the despatch of business,