

by default, under the rule, will be signed until after the first four days of the term; but after that an answer may be filed, and the decree rescinded, at any time before the first day of the next succeeding term. (j) On turning to the proceedings, in the original

to fix by the rule of the 28th of April, 1827, the close as well as the commencement of the sittings of each term.

(j) CLAPHAM v. CLAPHAM.—This was a bill filed on the 9th January, 1810, to foreclose a mortgage and have the property sold. It stated, that the defendant was not a resident within the State, and prayed publication, which was ordered and made.

KILTY, C., 4th October, 1810.—Upon the argument that took place at the present term, respecting the above suit, the Chancellor is of opinion, that it comes within the provision made by the 9th section of the Act of 1799, ch. 79, and that he is authorized to take the bill *pro confesso*, although he has also by the terms of the Act a power to issue a commission. Under the Act of 1795, ch. 88, after a publication against an absent defendant, and after the expiration of the time limited, he might, at any time before a decree, appear in person or by a solicitor, on which the same proceedings were to take place as if he had regularly appeared. This privilege occasioned an unreasonable delay; because it was easy for the absent defendant to appear by his solicitor, and he could not be brought in by an attachment for want of an answer. The Act of 1799, appears to have provided a remedy for this inconvenience,—the 9th section, relating to defendants appearing agreeably to an order, limiting a day for such appearance, which is done by the order of publication. An appearance was entered for the defendant at July Term, but no answer has been put in. It is urged by the counsel for the defendant, that the bill ought not to be taken *pro confesso*, but that a commission should be issued, under which payments of a part of the mortgage debt might be proved. But it was in the power of the defendant to put in his answer alleging such payments, on which an opportunity would, of course, have been given for the proof of them by commission, or before the auditor. There is nothing to shew, that it is essential to the justice of the case, that a commission should be issued, or even that it should be put before the auditor, the claim being *prima facie* established by the mortgage, and the affidavit of the complainant.* But in order that injustice may not be done to the defendant, inasmuch as the time usually limited for bringing in the money due in such case will go beyond the sitting of December Term, the decree is made not to be absolute until the 10th day of that term, during which, on sufficient cause being shewn, such alteration may be made as shall then appear necessary. Decreed, that the property in the proceedings mentioned be sold, &c.

HEPBURN v. MOLLINSON.—The defendants, having been summoned, had failed to appear, upon which the plaintiff obtained an interlocutory decree, in the usual form, under the Act of 1820, on the 14th of July, 1821. After which, on motion by the defendants, Caleb D. Goodwin and others, to appear and to have the interlocutory decree rescinded.—

KILTY, C., 18th July, 1821.—Ordered, That the decree be rescinded, together with the order for the commission. This order is made under the

* It appears that the plaintiff's affidavit of the sum due, in the usual form made before a Justice of the Peace, was endorsed on the mortgage.