

communicated to Scott's counsel; which after a considerable interval was again mentioned to him. And it is expressly charged, that Scott himself knew the fact before the decree was signed. That Scott's solicitor was very negligent is most manifest. But it does not clearly appear, that Scott, himself, is chargeable with negligence to a greater extent than about four or five months; for it is not said by Burch, in his answer, how long it was before the date of the decree, that Scott was informed his answer had not been filed: but it would seem, that the counsel for the plaintiffs in that case, to be assured of the fact whether Scott's answer was filed or not, inquired for it, and searched the papers so late as about the first of July, 1825. *Robson v. Cranwell*, 1 *Dick.* 61.

\* It is admitted by the defendants, that the decree of the 4th of August last is for a greater amount than it ought to **129** have been given for; and that it has awarded to them three hundred and ninety-two dollars and ninety cents more than was actually due, and more than they had any right whatever to claim or recover. In this respect, therefore, it confessedly requires revision and correction. It is a decree by default, and not upon the merits. But Scott avers upon oath, that he has a good defence against the whole claim of the defendants, which he prays to have let in. *Stanard v. Rogers*, 4 *Hen. & Mun.* 438; *Erwin v. Vint*, 6 *Mun.* 267. And it is not alleged by his opponents, that they have lost, or been deprived of any means of sustaining their pretensions. *Wooster v. Woodhull*, 1 *John. C. C.* 539. In short, under all the peculiar circumstances of this case, it appears to be fit and proper, that the decree of the 4th of August last should be revoked; but it must be upon the terms of paying all costs. November, 1787, ch. 9, s. 6.

Whereupon, it is decreed, that the decree of this Court, passed and signed on the 4th day of August, 1825, in the case wherein Thomas Burch, administrator *de bonis non* of Jesse Burch, Fielder Burch, and others, are plaintiffs, against William Scott, defendant, together with all the proceedings in the said suit subsequent to the fourth day of July Term, 1824, be and the same are hereby revoked, rescinded, and annulled. And it is further decreed, that the said William Scott do forthwith pay unto the complainants all the costs which they have incurred in the prosecution of the said suit subsequent to the 4th day of July Term, 1824, to be taxed by the register. And it is further decreed, that the answer of the said Scott, purporting to have been received and filed on the 7th of December, 1825, in the said case, be and the same is hereby allowed to be filed as his answer in the said suit, subject to all legal exceptions thereto.

---

From this decree the plaintiffs in the original bill appealed, and the Court of Appeals having reversed this decree without qualifi-