then it is obviously best for all concerned, that every doubt, as to the grounds upon which the leave rests, should be finally and conclusively settled before the bill is filed; for otherwise there would not be that security against the vexatious renewal of a suit which ought to exist, as contemplated by the rule which has been so long and so often approved; and besides, it it were otherwise, on the hearing of such a bill of review, the question, as to the propriety of the leave, would always be made or renewed as a preliminary point at that advanced stage of the proceeding.

In England this matter may be attended with some difficulty; as, I believe, the cheap and expeditious method of having testimony taken before a justice of the peace, respecting any interlocutory matter requiring an early decision, which has been so long and * well established as a practice in Maryland, *Clapham* v. *Thompson*, *ante*, 124, *note*, is unknown to the Chancery practice of England. On an application for leave to file a bill of review on the ground of newly discovered matter, I consider it most correct and conformable to the course of this Court, in similar cases, that the propriety of granting the leave should be at once fully investigated; that proofs should be admitted to be introduced in relation to it; and that the question should be then finally determined; since the evidence should any be wanted by either party, may be so fully and so readily collected by authorizing the parties to take testimony before a justice of the peace, to be read at the hearing of the application. But if no proof should be asked for, then the application may be determined upon the petition only as sworn to by the party applying. I am therefore of opinion, that according to the principles and practice in Chancery of this State, the testimony in this case has been properly taken; and therefore must now be attended to so far as it can be considered as coming from competent witnesses.

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It is objected that the defendant Thomas Harwood is an incompetent witness upon this occasion, because he is interested in having this decree thrown entirely open by a bill of review. In all cases, where there are two or more defendants, the Court may, if the liabilities of the defendants are distinct, or are susceptible of being separated, pass a decree affecting each differently, or in favor of one and against another of them. But if the case is so blended and entire as to impose none other than a joint liability upon all, so that the responsibility of no one can be separated from the rest, then there must be a decree against all or none. And if any one defendant, in such an entire case, makes out a good defence, the bill must be dismissed as to all; and there can be no decree against any other defendant, even if he should have admitted the plaintiff's case, or the bill should have been taken *pro confesso* as against him. This position I take to be sufficiently clear and satisfactory upon the bare statement of it. But where