

of review may be grounded by the special license of the Court and not otherwise." *Beam. Ord. Chan.* 2.

According to the English practice, no new testimony can be introduced into the case after the publication of that which has been taken has passed; and therefore, if the discovery of new proof is made after publication, but before a decree, the case falls within the meaning of the rule; because although it came to light before the decree, yet it could not possibly have been used at the time the decree passed. But in Maryland the mode of taking testimony is different: here the testimony not being taken in secret, or during any period held closed up; the English order of publication, with its incidents and consequences, have been virtually abolished. 1785, ch. 72, s. 14. Here a party may at any time, even after the case has been set down for hearing, if the application be made on reasonable grounds supported by an affidavit, obtain a commission to take the testimony wanted. *Howard v. Howard*, MS. February, 1806; *Anderson v. McCabe*, MS. 1807. And therefore, if the new proof comes to light at any time so long before the decree as to enable the party to apply for a commission, and he neglects to make such an application, he will not be allowed to have the benefit of the rule; because, by the exercise of due diligence, he might have had his testimony brought in so as to be used at the time of passing the decree.

It is expressly laid down, that forgetfulness or negligence of parties, under no incapacity, or of their solicitors, is no foundation for a bill of review; 1 *Harr. Pra. Chan.* 175; *Franklin v. Wilkinson*, 3 *Mun.* 112; *Jones v. Pilcher*, 6 *Mun.* 425; and therefore, an executor, whose duty it is to *look diligently after
512 the assets of his testator, and always to know the amount within his reach, cannot plead want of assets after the debt decreed. *Suffolk v. Harding*, 3 *Rep. Chan.* 88. So leave to file a bill of review was refused to be granted upon newly discovered evidence, of which the party was sufficiently apprised, by the suggestions in a letter and the proceedings in the case, to have enabled him, with reasonable diligence, to have put it upon the record originally. Because it was considered as most incumbent on the Court to take care, that the same subject should not be put in a course of repeated litigation; and, that with a view to the termination of the suit, the necessity of using reasonably active diligence in the first instance should be imposed upon the parties. *Young v. Keighly*, 16 *Ves.* 348. It is not sufficient to show, that injustice has been done; but that it has been done, under circumstances which authorize the Court to interfere; because if a matter has already been investigated, according to the common and ordinary judicial rules, a Court of equity cannot take upon itself to enter into it again. *Bateman v. Willoc*, 1 *Scho. & Lefr.* 204; *Wentston v. Johnson*, 2 *Mun.* 305. But, to show, that the party might,