

by the exercise of reasonably active diligence, have known, that which he alleges he has recently discovered, it is not enough, that the newly discovered proof was actually in his power at the time the decree was passed; it must also appear, that he knew of something, or that there was something in the case which might be considered as a suggestion, sufficient to apprise him, that there were such other facts and proofs pertinent to the case; and which it was his duty to have searched for; and, if practicable, to have brought in and put upon the record. 4 *Vin. Abr.* 412.

It may be admitted, that the credulity of the defendant Mullikin has been played upon to a considerable extent, and that he has even been misled by those from whom he sought information; but, that by no means furnishes a complete justification of his gross negligence. He himself admits, that his co-defendant Harwood had told him, that the debts mentioned in the deed of trust were not paid; that information it was his duty, as a trustee, to have followed out until he had ascertained the real truth, before he ventured rashly to compromit the interests of the *cestuis que trust*. He ought, from that suggestion, to have obtained a full knowledge of every material particular respecting those debts; the entire *disclosure of the facts in relation to which, being 513 called for by the bill, ought to have been set forth by him in his answer. Before he filed his answer, it was his duty to have read and maturely considered the bill; and a very ordinary degree of care also required of him an examination of the proceedings, in which he would have found the answer of Harwood, in which the fact of the specified debts being then outstanding was stated and relied on as a defence, at least in preference to the claim of the plaintiff. Instead of which, this defendant Mullikin, with a reckless negligence, which no Court of justice ought to tolerate, applied to the debtor, for whom he was surety, and to the solicitor of the plaintiff, for information; and, resting on what he thus learned, he filed an answer, carelessly drawn by the solicitor of the plaintiff, without ever having made the least inquiry in any other direction; although he had been thus amply apprised of the necessity of doing so. If the interests of this defendant alone were jeopardized; and, if no other person than himself were likely to suffer by letting this decree stand, I certainly could not open or modify it in any one single particular. He, who has been so egregiously negligent of his own rights, can have no claim to a rehearing, and a repetition of that litigation which he has so carelessly suffered to be terminated to his disadvantage. *Finley v. Bank U. S.*, 11 *Wheat.* 304.

But, from the matters now disclosed, and for this purpose established, it appears, that there are other views of this case, and other consequences likely arise from this decree as it now stands, than those which relate exclusively to the defendant Mullikin, and