

what it purports to be on its face, until it has been revised or reversed in a proper and solemn manner." And as the decree in this case purports upon its face to be a decree for the purpose of making partition among the parties to the cause, it will not be allowed to stand as such, if the proceeds of the sale are now taken from them and given to others.

When a decree is obtained and enrolled, though on a bill taken *pro confesso*, and requires explanation, it cannot be reheard on petition, and the remedy of the party grieved is by a bill to set aside the decree for fraud, or a bill of review which only lies against those who were parties to the original bill. 2 *Mad. Ch. Pr.*, 537.

This petition certainly cannot be maintained as a bill of review, either for error apparent on the face of the decree, or upon some new matter discovered since. Upon the face of the decree there is no error, and the petition does not profess to be founded upon new matter discovered since; nor has the leave of the court been obtained to file it; which is indispensable, regarding it as a bill founded upon new matter discovered since the decree. 2 *Mad. Ch. Pr.*, 538; *Burch et al. vs. Scott*, 1 *G. & J.*, 125.

And it may very well be doubted, whether, if the leave of the court had been asked for, to file a bill of review, upon newly discovered matter, it would have been granted; the interference of the court to relieve a party from the consequences of his default depending upon sound discretion, arising out of the circumstances of the case. *Wooster vs. Woodhull*, 1 *Johns. Ch. Rep.*, 541; *Burch vs. Scott*, 1 *G. & J.*, 426.

The circumstances of this case are not such as to enlist the favorable consideration of the court, or to entitle the petitioner to be relieved from the consequences of his neglect. He states, "that he was served with a subpoena from the court, issued against him by the name of Peter Pfeltz, to appear in said court in said cause, upon which he inquired of the said Ann Maria, for what purpose he had been served with a subpoena from chancery, at her suit; when she informed him the proceeding in said suit was stopped, which induced him not to attend to the cause, which he would otherwise have done."