

due; or owing to a kind of negligence for which they are not at all blamable, or for which they may, at least, be excused. Upon these grounds they pray to have the decree opened and the cause re-heard. According to the *English* authorities, if the enrolment of a decree be obtained by surprise, or irregularly, it may be opened; provided, the application be made within a reasonable time. And where the merits of the case had not been entered into, an enrolled decree has been set aside upon special circumstances, notwithstanding the proceedings were strictly regular. For a court of equity will make every effort, within its power, to reach the merits of the case, and have justice done.(j)

This bill, then, divested of all extraneous matter, may be regarded in three distinct characters: first, as an original bill, to have the decree of the 4th of August last reversed on the ground of fraud, because it injuriously affects the interests of some of these complainants who were not parties to it; secondly, as a bill of review for error apparent on the face of the decree; and thirdly, as a bill, grounded on the peculiar circumstances, asking to have the decree by default set aside, and the case re-heard upon the merits.

It was in these characters, that it presented itself to the mind of the Chancellor, when it was first laid before him. He then felt, as he still does, a strong impression, that these different characters and alternative aspects, and prayers, were so entirely incompatible, as to be incapable of being blended together in the same bill:(k) but he conceived, that if it could be sustained in all, or any of them, the parties complaining would be entitled to relief. And, under this impression, it seemed to him fit and proper, to suspend, at least for a season, the execution of the decree, until these matters could be more carefully canvassed, and both parties could be heard. And therefore it was, that he passed the order of the 16th of November last; which operated as an injunction, and was intended so to operate.(l)

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(j) *Kemp v. Squire*, 1 Ves. 206; 2 Mad. Chan. 465.

(k) *Perry v. Phélips*, 17 Ves. 176.

(l) Restrictive orders, staying the execution of the court's own decree, so common in England, have always there, *Edin. Inj.* 209, as here, been considered as injunctions, and been treated accordingly, *Norwood v. Norwood*, MS. 1808.

*CLAPHAM v. THOMPSON*.—This was a bill to account, &c., filed on the 22d of September, 1787, praying for relief, and also for an injunction to stay a sale under a *feri facias* from this court. Upon which was passed the following order.

22d September, 1787.—*ROGERS, Chancellor*.—On the bill of complaint exhibited in this court by Josias Clapham and Mary Carey, against Cornelius Thompson, John