

are not incompatible, particularly as no objection to it has been made on that ground; or whether the decree has been obtained by fraud or not; or is erroneous upon its face. The decree of the 4th of August last, now complained of, was obtained in that suit by the default of the defendant, in not filing his answer within the time prescribed by the rules of the court. This apparent negligence the present plaintiffs, by their bill, have endeavoured to account for, to justify, or to excuse. And whether they have done so or not, is the matter now to be ascertained: if they have, this decree must be opened.

The decree was signed as of July term; and, as has been observed before, all decrees and orders of the court being held entirely subject to its control during the term, if an answer had come in at any time previous to the close of that term, the decree by default would have been set aside, and the defence let in.^(o) No decree by default, under the rule, will be signed until after the first four days of the term; but after that an answer may be filed, and the decree rescinded, at any time before the first day of the next succeeding term.^(p) On turning to the proceedings, in the origi-

(o) When this opinion was delivered there were, as it appears there had always been, four regular terms of this court, in each year, for the return of process, &c. But the continuance of the *sittings*, which in this and all other similar cases, is spoken of as the *term*, was irregular and indefinite. When it was presumed, that all the cases, ready for hearing, had been called up, the *sittings*, or as they have been most usually called, the *terms*, were closed, by a memorandum to that effect entered upon the docket, by order of the Chancellor. This was attended with inconvenience; for although the Court of Chancery has terms, it is not, in the sense of the common law, a term court; but is always open, (1 *Rep. Ca. Chan. Earl of Oxford's case*, 6. *Crowley's case*, 2 *Swan*, 11.) I therefore deemed it proper, that the rules might be better understood and enforced, and for the despatch of business, to fix by the rule of the 28th of April, 1827, the *close* as well as the commencement of the *sittings* of each term.

(p) CLAPHAM v. CLAPHAM.—This was a bill filed on the 9th January, 1810, to foreclose a mortgage and have the property sold. It stated, that the defendant was not a resident within the State, and prayed publication, which was ordered and made.

4th October, 1810.—KILTY, Chancellor.—Upon the argument that took place at the present term, respecting the above suit, the Chancellor is of opinion, that it comes within the provision made by the 9th section of the act of 1799, ch. 79, and that he is authorized to take the bill *pro confesso*, although he has also by the terms of the act a power to issue a commission. Under the act of 1795, ch. 88, after a publication against an absent defendant, and after the expiration of the time limited, he might, at any time before a decree, appear in person or by a solicitor, on which the same proceedings were to take place as if he had regularly appeared. This privilege occasioned an unreasonable delay; because it was easy for the absent defendant to appear by his solicitor, and he could not be brought in by an attachment for want