

term, 1824; because, their decree by default, according to the established practice, was liable to be corrected or revoked during the term at which it was signed. The July term, 1825, commenced on the 12th of that month, and was not finally closed until the 17th of August following. Consequently, the decree was not final and absolute until that day. After which it could only be opened or affected by an original bill, or a bill of review. The bill to set aside this decree was not filed until the 15th day of November, 1825; and *Scott*, one of the plaintiffs here, was not charged, on the record of the original case, with a default, which might have been fixed upon him by a decree, until the 18th day of July, 1824, making a space of about fifteen months of apparent negligence, which is to be accounted for, justified, or excused. To find which, we must examine the bill and answer in this case.

That the defendant, *Scott*, in the month of July, 1824, and before he could have been finally fixed with a decree by default, had made an answer, which was ready to be put on file; that he had charged his solicitor with the care of it, who had attempted to forward it to the register, to be put on file; are facts proved and not denied. It also appears, that under a firm belief that his answer had reached its destination, and was on file, his solicitor proposed to the solicitor of the plaintiff, to agree upon some day when the cause should be argued by them. The defendant in this case, *Thomas Burch*, in his answer, states, that thereupon his counsel wrote for a copy of *Scott's* answer, and was informed that it had not been filed; which information was shortly afterwards communicated to *Scott's* counsel; which after a considerable interval was again mentioned to him. And it is expressly charged, that *Scott himself* knew the fact before the decree was signed. That *Scott's* solicitor was very negligent is most manifest. But it does not clearly appear, that *Scott*, himself, is chargeable with negligence to a greater extent than about four or five months; for it is not said by *Burch*, in his answer, how long it was before the date of the decree, that *Scott* was informed his answer had not been filed: but it would seem, that the counsel for the plaintiffs in that case, to be assured of the fact whether *Scott's* answer was filed or not, inquired for it, and searched the papers so late as about the first of July, 1825.(g)