

leave to file a bill of review, or to have granted to him such other relief as the nature of the case might require.

It has been urged, that the petition, having been sworn to, is of itself sufficient ground for granting leave to file a bill of review; that it was entirely unnecessary to have taken any testimony in support of the allegations of the petition; and therefore, that it would be needless to decide upon the objections made to the competency of the witnesses who have been examined.

I have met with no instance in the English books, in which it appears, that any testimony had been taken and read at the hearing of an application for leave to file a bill of review grounded on an alleged discovery of new matter unknown before the decree. It is clear, that the party himself, as well as his solicitor, if the solicitor be alive, and there is any reason, from the circumstances of the case, to believe that he might have known of the alleged new matter, must each of them make a particular, full, and distinct affidavit, that he did not, before the decree, know of that which is stated as the newly discovered matter.(a) But, it is said to be necessary to state in such bill of review, that leave was obtained to file it, and the fact of the discovery; though it may be doubted, whether after leave given to file the bill, that fact is traversable; or whether, if it should not be admitted it must be proved at the hearing of the bill of review.(b) Hence it would seem, that the grounds upon which the leave is granted should, at one stage or other, be allowed to be traversed, and be required to be sustained by proof. If so, then it is obviously best for all concerned, that every doubt, as to the grounds upon which the leave rests, should be finally and conclusively settled before the bill is filed; for otherwise there would not be that security against the vexatious renewal of a suit which ought to exist, as contemplated by the rule which has been so long and so often approved; and besides, if it were otherwise, on the hearing of such a bill of review, the question, as to the propriety of the leave, would always be made or renewed as a preliminary point at that advanced stage of the proceeding.

In England this matter may be attended with some difficulty; as, I believe, the cheap and expeditious method of having testimony taken before a justice of the peace, respecting any interlocutory matter requiring an early decision, which has been so long and

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(a) 1 Harr. Pra. Chan. 179.—(b) Mitf. Plea. 89.