upon the admission of *Mullikin*, and the absence of any proof of the then existence of the debts mentioned in the trust deed, directing the mortgage debt to be paid, and if not, that the property should be sold for the satisfaction of that debt alone.

The law of the court in relation to bills of review was laid down in a set of ordinances or rules established by *Lord Bacon* as far back as the beginning of the year 1618. The sound sense and utility of those rules have been amply tested, and they have been adhered to ever since. In regard to the matter now under consideration, the rule is expressed in these words: "Upon new proof, that is come to light after the decree made, and could not possibly have been used at the time when the decree passed, a bill of review may be grounded by the special license of the court and not otherwise."(*g*)

According to the English practice, no new testimony can be introduced into the case after the *publication* of that which has been taken has passed; and therefore, if the discovery of new proof is made after publication, but before a decree, the case falls within the meaning of the rule; because although it came to light before the decree, yet it could not possibly have been used at the time the decree passed. But in Maryland the mode of taking testimony is different: here the testimony not being taken in secret, or during any period held closed up; the English order of publication, with its incidents and consequences, have been virtually abolished.(*h*) Here a party may at any time, even after the case has been set down for hearing, if the application be made on reasonable grounds supported by an affidavit, obtain a commission to take the testimony wanted.(*i*) And therefore, if the new proof comes to light at any time so long before the decree as to enable the party to apply for a commission, and he neglects to make such an application, he will not be allowed to have the benefit of the rule; because, by the exercise of due diligence, he might have had his testimony brought in so as to be used at the time of passing the decree.

It is expressly laid down, that forgetfulness or negligence of parties, under no incapacity, or of their solicitors, is no foundation for a bill of review;(*j*) and therefore, an executor, whose duty it is to

(*g*) Beam. Ord. Chan. 2.—(*h*) 1785, ch. 72, s. 14.—(*i*) Howard *v.* Howard, MS. February 1806; Anderson *v.* McCabe, MS. 1807.—(*j*) 1 Harr. Pra. Chan. 175; Franklin *v.* Wilkinson, 3 Mun. 112; Jones *v.* Pilcher, 6 Mun. 425.