who had paid the whole debt, to take the place of the government; and thus secure to himself the high, and overruling preference to

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and had in fact paid. Prayer, that the mill, &c. might be sold to reimburse the plaintiff, &c.

On the 12th of February, 1804, the infant heirs of James Cooper answered by their guardian *ad litem:* and the trustee, Sherwood, also put in his answer, by which they admitted the truth of the allegations of the bill. Upon which the case was submitted; and on the 13th of February, 1804, a decree was passed that the property be sold, &c. After which the infant defendants, by William Atkinson, their guardian, petitioned that the decree might be opened, and that they might have leave to amend their answer.

1*st March*, 1804.—HANSON, *Chancellor.*—Not even an affidavit of the truth of the matters stated in, or annexed to the petition. The Chancellor, therefore, cannot at present comply with the prayer of the petition.

On the 2d of April, 1804, a similar petition, with an affidavit of the truth annexed, was filed; and the plaintiff, Meluy, afterwards filed a counter petition, upon which the case was again submitted.

1*st May*, 1804.—HANSON, *Chancellor.*—The Chancellor has considered the said petitions. The former, although intended to prevent the execution of a decree, is neither an application for rehearing a cause, nor a bill of review. It is a request that a decree may be opened, and that another answer may be admitted, and fresh proceedings be had. In fact it was an application to set aside a decree, regularly passed on the bill, answers, and proof, without suggesting any error in judgment, or discovery of facts; and that, too, is expected to be done without hearing the other party or calling on him to answer. A similar application the Chancellor does not recollect ever before to have received or heard of. If it should succeed, the precedent thereby established, might render decrees of little value indeed; as a defendant, against whom a decree should be passed, might obtain an order for annulling the proceedings; or, at least, infant defendants might have that advantage.

When a decree is passed, the parties are no longer in court. Suppose the Chancellor to pass an order for opening the decree, as is prayed, what are to be the subsequent proceedings? It may be said, the Chancellor is to act according to his discretion, to prescribe the time for putting in an answer by another guardian, &c. &c. But under what law, usage, or practice, should he act? On a bill of review, permitted to be filed, or an order for rehearing, the practice is established. But the present application, as has already been observed, is neither a bill of review nor a petition for rehearing. In a word, it appears wholly unprecedented, as well as improper.

Mr. Meluy, however, hearing of the application, has filed a petition against it. Perhaps this petition may be considered as a voluntary answer to the petition of Mr. and Miss Cooper by Mr. Atkinson, calling himself their guardian. Mr. Meluy has, in his petition, made a proposition which appears reasonable, viz. to have an account stated by the auditor.

And it is, therefore, adjudged and ordered, that the auditor of this court, on the 15th day of June next, proceed to state an account between the deceased, father of the petitioners, Thomas and Ann Cooper; provided the said Atkinson shall come before the auditor for that purpose; and that the said trustee, appointed to sell the said property, shall not proceed to a sale until further order.

The Chancellor thinks proper to declare, that he passes this order merely because the said Meluy has, by his petition, offered to have the sale postponed, and to have an