fund: it is sufficient, if it appear that he has no equitable right or title to the money he is called upon to produce. As where an executor admitted a balance in his hands, but alleged, that an action at law was then depending against him, and insisted, that the fund should not be taken out of his hands while he so remained liable to be called on. But the Court ordered in the whole balance; and, on a recovery being had, the money was ordered to be paid to the plaintiff in the action, and not to the executor. *Yare* v. *Harrison*, 2 *Cox*, 377; *Mortlock* v. *Leathes*, 2 *Meriv.* 491; *Strange* v. *Harris*, 3 *Bro. C. C.* 365; *Blake* v. *Blake*, 2 *Scho. & Lefr.* 26; *Rutherford* v. *Dawson*, 2 *Ball & B.* 17; *Yates* v. *Farebrother*, 4 *Mad.* 239; *Johnson* v. *Aston*, 1 *Sim. & Stu.* 73; *Rothwell* v. *Rothwell*, 2 *Sim. & Stu.* 217.

It is said, in the books, that orders of this kind were originally confined to cases where the facts were expressly admitted in the defendant's answer. It is easy to imagine, that their propriety was originally suggested by cases of that obvious and unequivocal character; but the Court, having been made acquainted with their beneficial consequences, soon perceived the principle on which they were based; and in a short time threw aside the anomalous and technical notions about the necessity of finding the facts expressly admitted in the answer.

In the case of *Freeman* and *Fairlie*, 3 *Meriv.* 29, which was so cogently pressed upon the attention of the Court by both parties, Lord Eldon says, "I think it right to say that, under all circumstances, I can take the personal estate to have been in 1791, £2,000, and that I may add the accumulations to 1812; but I have not in this answer any distinct admission, that he has laid out the money in East India securities, in such a way as to enable me to ascertain and order him to bring in what is the fair amount of the personal estate." And in conclusion, the Chancellor ordered the defendant to bring in the sum of £3,680; whence it is clear, that he felt himself at liberty to go as far in pronouncing the conclusion of law from the facts, as those facts were then, and in that stage of the case, established, and open to no contradiction or explanation in the course of the subsequent proceedings. For, although the Chancellor took much pains to shew, that the defendant had, by * his own answer, covered himself with shame; yet the order went no further than the incontrovertible facts would **158** fairly warrant; or, as the Chancellor says, "under all circumstances." Hence, if the statements, allegations, and then situation of the case, in relation to the motion, are of such a nature as to leave the matter open to be affected by the proofs to be adduced at the final hearing, the Court cannot pass any interlocutory order or decree whatever on the subject. *Strange* v. *Harris*, 3 *Bro. C. C.* 365; *Peacham* v. *Daw*, 6 *Mad.* 98.