The answer of the defendant John Bell, it has been urged, may be resorted to, as belonging to the *res gesta*, to the same subject, either as direct evidence, or for explanation, or illustration. It is, in general, true, that the answer of one defendant cannot be used as evidence for or against another defendant. Whatever may be the extent of the exceptions to this rule, none of them embrace this case; *Osborn* v. *U. S. Bank*, 9 *Wheat.* 832; *Field* v. *Holland*, 6 *Cran.* 24, for it is very clear, that Thompson has made no reference to, nor admitted any thing which John Bell has said in his answer; nor has the truth of any one of John Bell's allegations been put in issue, before the auditor, or otherwise, and conclusively established against Thompson. The answer of John Bell, the co-defendant, cannot, therefore, be allowed to furnish any of those facts on which the decision of the Court must be founded on this motion.

The plaintiffs have also directed the attention of the Court to the exhibits and proofs taken, under the order of the 10th of May last, in reference to this motion, and have contended, that, in cases like this, proofs of collateral facts and circumstances may be introduced. But the authorities relied on to sustain this position, point to an important distinction in the classification of cases of this nature.

161 *In cases between vendors and purchasers of real estate, the purchaser, who is not in possession, cannot be called upon to pay in the purchase money until the title is completed; nor will the mere fact of his taking possession, entitle the vendor to call upon him for the payment of the purchase money into Court. But if the purchaser, being in possession, exercises acts of ownership, he may be compelled to pay the purchase money into Court. And the taking possession, and the acts of ownership, though not mentioned in the bill or answer, are the collateral facts which may be shewn by affidavits, or by proofs taken in a manner similar to those offered upon the present occasion. But, in such cases, that the purchase money is due, and the amount, are facts admitted and established; and whether it should be immediately brought in, or whether the purchaser should be indulged until final hearing, or how much short of that, are questions which depend upon equitable circumstances, not necessarily involved in the principal controversy, that never would be brought into view, but by such a motion. They are, therefore, truly and properly collateral circumstances.

But, in this case, the question is, whether, in the direct progress of a case, it has been established or admitted, that a party holding money has no title to it; and is, therefore, liable to be called on in this way. In this class of cases, it is a part of the principal matter in controversy—one of the circumstances of it; as much so as in the other class, between vendor and purchaser, whether the