cannot be considered as forming any part of those allegations upon which an issue between these parties has been or might have been joined. It is nothing more than a sort of exception to the testimony which has been improperly foisted in with the return of the commission, *and can be considered at most as standing only as if made in argument at the final hearing. But, as such, it is wholly inadmissible in any way; and particularly for the purpose of excluding any proof merely because of the inferiority of its grade, or because of its not being such written evidence as might have been required had the Statute of Frauds been specially relied upon. **249**

In the next place, apart from the Statute of Frauds, the admission of this testimony is objected to on the ground, that it cannot be received in so far as it goes to contradict or explain the receipt of J. M. Lingan on the deed for the purchase money, or the memorandum of the 10th of June, 1807. The evidence given by this witness is, however, introduced, not to contradict or vary any part of the entire contract, but to supply deficiencies and to prevent fraud, by shewing that of which the deed of conveyance says nothing, and to corroborate, explain and fortify that of which the memorandum of the 10th of June speaks ambiguously. Taken in this point of view, this parol proof may well and consistently stand with the deed, and so much of the whole contract, as has been actually reduced to writing. *Joynes* v. *Statham*, 3 *Atk.* 389; *Blagden* v. *Bradbear*, 12 *Ves.* 471; *Hartopp* v. *Hartopp*, 17 *Ves.* 191; *Co. Litt.* 222, *b*, *n.* 2; *Pow. Mort.* 200. A receipt, not under seal, although it be strong, is not, in all cases, conclusive evidence of the fact; *Trisler* v. *Williamson*, 4 *H. & McH.* 219; *Hughes* v. *O'Donnell*, 2 *H. & J.* 324; 4 *Stark. Ev.* 1272; but a receipt for the purchase money, such as this, endorsed by J. M. Lingan, the grantor, for the sum of five dollars, the nominal consideration, on the back of the deed, looking to the usage, in such cases, of making an absolute conveyance, of which such a receipt is a mere formal part, leaving the purchase money in fact unpaid, is considered, in equity at least, as being, in itself, evidence of the lowest order. *O'Neale* v. *Lodge*, 3 *H. & McH.* 433; *Dixon* v. *Swigget*, 1 *H. & J.* 252; *Higdon* v. *Thomas*, 1 *H. & G.* 145; *Knight* v. *Pechey*, *Dick.* 327; *Sug. Ven. & Pur.* 386; *Pow. Mor.* 1062; *Irvine* v. *Campbell*, 6 *Bin.* 118; *Duvall* v. *Bibb*, 4 *Hen. & Mun.* 113. This second objection, as well as the first, must therefore be totally overruled.

It has been long and well established as a rule of law and equity, that the plaintiff can only obtain relief upon the strength of his own title as it existed at the time of instituting his suit, and not on the weakness of the title of his adversary, or the imbecility of his defence. *Mitf. Pl.* 141, 154, 232; *Barfield* v. *Kelly*, 4 *Russ.* 355; *Watts* v. *Lindsey*, 7 *Wheat.* 161. In general, if the facts stated in the bill are not in substance sufficient to entitle the com-