

dealings with all persons; consequently it can have no pretension to any greater right, arising from its mere character as a body politic, than any individual whatever to withhold any legal evidence, that may be in its possession. It is the duty of an executor or trustee to keep distinct accounts of the property which he himself is bound to administer. But if he blends them in accounts with others, and puts the accounts of his testator or the *cestui que trust* into his banking or any other books, with the knowledge and approbation of those who may have a separate interest in such books, the *cestui que trust* will have a right to see every part of such original books, which contain anything in relation to the transaction in which he has an interest. *Earl of Salisbury v. Cecil*, 1 Cox, 277; *Brace v. Ormond*, 1 Meriv. 409; *Freeman v. Fairlie*, 3 Meriv. 53; *Bolton v. Corporation of Liverpool*, 6 Cond. Chan. Rep. 513.

The Act of Assembly upon this subject relates to the documentary evidence in possession of a party to a suit; 1798, *ch.* 84; and as regards this Court, has been truly considered as merely an affirmance of its powers. *Hall v. Wirt*, 1806, *per* KILTY, Chancellor, MS. But where certain specified books and papers are in the hands of third persons, and the evidence they contain, materially bearing on the matter in issue, is distinctly designated, as in this instance, it is clear that a Court of equity, as well as a Court of common law, may resort to competent means to compel the production of such specified written testimony, as well as verbal proof; since the power to do so is essential to its constitution as a Court, without which it could not possibly proceed with due effect. *Amey v. Long*, 9 East, 484; *Earl of Salisbury v. Cecil*, 1 Cox, 277; *The Princess of Wales v. The Earl of Liverpool*, 1 Swan. 114; *Walburn v. Ingilby*, 6 Cond. Chan. Rep. 508; *Bolton v. Corporation of Liverpool*, 6 Cond. Chan. Rep. 513; 3 Blac. Com. 382; 1 Harr. Prac. Chan. 450, 474; *Kinggold v. Jones*, 1 Bland, 90, *note*. I shall, therefore, overrule the objection of this witness; and order him to testify as required by the interrogatories.

In this case, the examination has not been attempted to be taken * under a regular commission. But the mode of proceeding authorized by the order of the 21st of February, 196 1829, under which it was proposed to act, amounts substantially to a commission. That order authorized an examination before the commissioners appointed for Baltimore County; or any justice of the peace. The commissioners having been regularly appointed according to the Act of Assembly; 1826, *ch.* 222; 1829, *ch.* 159; *Park His. Co. Chan.* 361; must, therefore, for this purpose, be considered as much the ministerial officers of the Court, as if they had been nominated as commissioners in a commission specially directed to them in the ancient form.

In regard to the authority given by the order of the 21st of February, 1829, to take the depositions of witnesses before a justice