

any of the English cases, but in what particular is not perceived. The English cases are grounded upon an interest in the plaintiff, and an admission in the answer itself, or an admission by reference to a schedule, or to books or documents; or upon an auditor's report confirmed; because the confirmation of such a report is a judgment of the Court. In the late case in this Court, the admission was accompanied by a reference to a deed, the construction **267** of which belonged to the Court, * and which was found to be unambiguous, and to leave no room for the introduction of proof as to its true intent and meaning.

It is a general rule, that a plaintiff may at any time, without or by withdrawing his general replication, set the case down for final hearing on bill and answer. But if he does so, he thereby necessarily admits the truth of all the facts set forth in the answer, as well those stated as directly responsive to the bill, as all those new facts and circumstances, pertinent to the matter in controversy, which have been introduced into it by way of avoidance, or as a defence. The reason and utility of this rule are obvious. The plaintiff cannot be permitted to deprive the defendant of the means of sustaining his defence by proof; but if he admits the truth of all the facts alleged by way of defence in the defendant's answer, he does not do so. Because a defendant cannot be expected or allowed to make his defence stronger, or better than he himself has stated it, and therefore if the plaintiff admits the truth of all those facts set forth as constituting that defence, the defendant can have no cause to complain, nor any pretext for asking to be indulged with any further delay to the prejudice of the plaintiff, since the collecting of proofs in such case must be altogether unnecessary. *Grosecnor v. Cartwright*, 2 *Ca. Chan.* 21; *Barker v. Wyld*, 1 *Vern.* 140; *Wrottesley v. Bendish*, 3 *P. Will.* 237, *note*; *Legard v. Sheffield*, 2 *Atk.* 377; *Wright v. Nutt*, 3 *Bro. C. C.* 339; *Beam's Orders*, 29, 180; 2 *Er. Pothier Ob.* 137.

So, in cases of this kind, where the order is proposed to be grounded on the admissions of the defendant. The truth of all the facts alleged in the answer must necessarily be conceded, because the defendant cannot have his answer garbled, or be deprived of the means of sustaining his defence by proof, if the facts alleged by him are denied; and because it is only by the plaintiffs' granting the truth of the facts alleged by way of defence, that it is rendered wholly unnecessary to adduce proof, and the case becomes so situated as to be susceptible of being fairly and at once presented to the Court, upon facts not liable to be contradicted or explained away at the hearing.

From some expression which fell from the counsel in the course of the argument, I deem it proper, however, to remark, that in declaring that all the allegations of the defendant's answer, in cases of this sort, must be taken to be true, I mean the allegations of