

in controversy to which it related, in that case and between those parties. But even considering the settlement of this account by this executrix, Eleanor Dawson, before the Orphans' Court, as a judgment of that tribunal; yet it certainly is not a judgment between the parties to this case, upon any point now in controversy between them. Nor can it be received as an admission in a course of judicial proceeding, in direct reference to the matters in controversy in this case, which the party can neither contradict nor explain away at the final hearing. It is, therefore, in no respect analogous to a confirmed auditor's report, and consequently can furnish no foundation for an order to bring money into Court.

But this account, it has been urged, is admissible as proof of collateral facts, which, together with those admitted by the answer, furnish a sufficient ground for the order now asked for. I have said upon a former occasion, that the foundation for such an order must be found in the direct progress of the case; and be such as cannot be afterwards contradicted or explained away. Such is the general rule; and the reason is obvious. If the Court were to stop, or to turn aside from the direct progress of the case to collect proofs, in relation to an interlocutory order respecting any matter, which must, according to the regular course, remain open for proof until the case was set down for hearing, it would thus anticipate the final hearing and decision upon the merits; and involve itself in endless difficulties and contradictions; and be employed in acting and re-acting for no beneficial purpose, or indeed, often in doing the greatest injustice to the parties.

The only cases in which the Court has allowed itself to depart from this general rule, are those which arise between vendors and purchasers. The reason why affidavits are admitted, in such cases, to establish those facts and circumstances which are necessary, in connection with the pleadings, to lay a foundation for an order to bring money into Court, has been already sufficiently explained in a late case. *McKim v. Thompson*, 1 *Bland*, 155. This

**270** is not such a case; nor is there \* any thing in it, which can in any respect whatever, take it out of the general rule, which forbids the Court from turning aside, from the direct progress of the case, to attend to the introduction of proofs in relation to any matter involved in a consideration of the merits of the whole case, and which should remain open until the final hearing.

It is, therefore, ordered, that the order of the 27th of February last, be discharged; and the petition of the complainants be dismissed with costs.

After which commissions were taken out, under which proofs were collected and returned; and the case was brought on for a final decision.