The bills, through a portion of them, seem to consider the next of kin, or as it calls them, the heirs of the late Anthony Hook, to be parties to this suit. But they have neither been made plaintiffs nor defendants as such; and therefore, all that has been said or proved about them and their agreements must be rejected as mere surplusage. William McMechen, a defendant, says he answers "the bill of complaint of James Neale and others, representatives * of Anthony Hook, deceased;" and, in the body of his answer he says, "during all which time several of the com- **567** plainants resided in the neighborhood of the land." And others of the defendants seem to have an eye to some other complainant besides Neale. These respondents appear, in this respect, to have turned their attention to some of the irrelevant circumstances stated in the bill, without sufficiently regarding its substance. But all such expressions and allusions in the answers must in like manner, be rejected as surplusage.

So much as to the excrescences, the foreign matter and mere careless verbiage of the bill and some of the answers. But before we proceed to consider the merits of the case it will be necessary to ascertain from these pleadings, as accurately as practicable, what is the matter in issue; and what part of the allegations of each has been admitted, taken for true, or is to be sustained or combatted by proof. In relation to these matters it will be necessary to explain, recollect and apply some of the general rules in relation to answers.

The first of these general rules, which have a bearing upon this case, is, that where the general replication is put in, and the parties proceed to a hearing, all the allegations of the answer, which are responsive to the bill, shall be taken for true; unless they are disproved by two witnesses, or by one witness with pregnant circumstances. The answer to this extent is considered as evidence, and conclusive unless disproved, even although the defendant may have a direct and palpable interest in establishing the truth of what he advances. *Lenox* v. *Prout*, 3 *Wheat.* 527. An answer is only so far responsive as it answers to a material statement or charge in the bill as to which a disclosure is sought; and which is the subject of parol proof, but no further. Where a deed, or instrument of writing is necessary to establish any right, and the bill requires the evidence of such right, the answer, unaccompanied and unsupported by such deed or writing, will be no evidence although it should directly respond to the bill; because the answer is only in the nature of parol evidence; and, in such case evidence of a higher grade is required by law. *Brown* v. *Selwin*, *Ca. Temp. Tal.* 242; *Hayward* v. *Carroll*, 4 *H. & J.* 521; *Jones* v. *Slubey*, 5 *H. & J.* 381.

But where the bill asks for the production of evidence, which from the nature of the plaintiff's case, he has a right to claim;