

that the business of the trust, prior to the appointment of the defendant, in 1836, was not to be inquired into. Certainly, if the defendant had accounted with, and paid to his principals, the original trustees, all the money which came to his hands as agent, he would not be responsible to these plaintiffs, and, therefore, when he alone is brought before the court, and those trustees, or they being dead, their personal representatives, are not made parties, he might very naturally assume that the subjects to be investigated in the cause would be confined to his acts as trustee, and not to acts performed in the capacity of agent for others, who, or whose representatives, were not brought before the court. To those original trustees the defendant was certainly *per directum*, liable, and though as this case now stands, it may be that the *cestique trusts* are entitled to proceed directly against the defendant in respect of his transactions as agent, (a point not now meant to be decided,) yet certainly when the original trustees, or those who now represent them, are not made parties, the bill if it meant to call the defendant to account in the double capacity of agent and trustee, should do so in terms free from ambiguity or equivocation. This bill, in my judgment, does not do so. It calls upon the defendant for a detailed account of the business of *the trust*, but does not call upon him for an account of the business of the trust and *agency*, for the failure to render which the exception is taken.

The bill, it is true, speaks of both the trust and the agency, and very properly distinguishes between them; but the interrogating part seems to be confined to a call for information, and an account with regard to the trust, and the defendant might very readily and naturally have supposed that the only relief sought against him was in his character as trustee; and it may have been from that impression that he submitted to answer, instead of demurring. If by joining these two matters the bill would have been multifarious, and the defendant by the ambiguous manner in which they are presented, has been induced to forego that mode of defence, and must now give full and explicit answers to what was not fully and explicitly stat-