

[The facts of the case are stated in the opinion.]

THE CHANCELLOR :

This case is submitted, on the part of the defendant, upon the petition of the complainant and the order of the Court of the 12th of March last, requiring the defendant to bring in a certain sum of money, or show cause to the contrary by a day limited for that purpose.

The case is submitted without proof, and therefore the propriety of compelling the defendant to bring in the money depends entirely upon the admissions of the answer; and upon these admissions indeed the complainant rests his application. The rule upon this subject is well stated, by the late Chancellor, in *McKim vs. Thompson*, 1 *Bland*, 150. At page 159, he says "that those who make this motion" (that is, a motion to have money brought in), "must show that they have an interest in the sum of money proposed to be called in, and that he who holds it in possession has no equitable right or title to it whatever; and the facts on which these positions are to be based, must be found in the case as it then stands. Either admitted or so established as to be open to no further controversy at any subsequent stage of the proceedings."

Now in this case the answer exhibits certain accounts, showing a balance due the complainant, upon which the defendant says he was willing to settle and pay the balance; but that complainant had refused to receive such balance, and subsequently filed his bill in this Court. But this exhibition of the accounts and declared willingness to pay the balance appearing by them to be due the complainant, is accompanied by the qualification "that the respondent believed, and still believes, that the balance there struck in favor of the complainant, was too large." And in a subsequent part of the answer, the defendant, after alleging that he had paid certain sums with which he had not been credited, claims that he is now entitled to have them credited in his settlement with the complainant.

The admission, therefore, perhaps, can be regarded as nothing more than an offer to compromise a disputed account,