

lished as to be open to no further controversy at any subsequent stage of the proceedings. (m)

These principles being settled, the next inquiry is, how far the court may allow itself to range through this case in search of those facts, which are to be thus taken, as admitted or established. The plaintiffs contend, that the answer of a co-defendant, and certain exhibits and proofs, taken in express reference to this motion, should be read and considered. On the other hand, the defendant *Thompson* urges, that the very satisfactory explanations of what he calls his supplemental answer; or at least, that matter stated in his petition, filed on the 31st of January last, as the substance of a supplemental answer, which he ought to be permitted now to file, should be taken into view. All these matters must be disposed of before we can safely undertake to bring together what may be considered as the admitted, or established facts in relation to this motion.

The answer of the defendant *John Bell*, it has been urged, may be resorted to, as belonging to the *res gesta*, to the same subject, either as direct evidence, or for explanation, or illustration. It is, in general, true, that the answer of one defendant cannot be used as evidence for or against another defendant. Whatever may be the extent of the exceptions to this rule, none of them embrace this case; (n) for it is very clear, that *Thompson* has made no reference to, nor admitted any thing which *John Bell* has said in his answer: nor has the truth of any one of *John Bell's* allegations been put in issue, before the auditor, or otherwise, and conclusively established against *Thompson*. The answer of *John Bell*, the co-defendant, cannot, therefore, be allowed to furnish any of those facts on which the decision of the court must be founded on this motion.

The plaintiffs have also directed the attention of the court to the exhibits and proofs taken, under the order of the 10th of May last, in reference to this motion, and have contended, that, in cases like this, proofs of collateral facts and circumstances may be introduced. But the authorities relied on to sustain this position, point to an important distinction in the classification of cases of this nature.

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(m) *Montgomery v. Clark*, 2 Atk. 378; *Rogers v. Rogers*, 1 Anstr. 174; *Quarrell v. Beckford*, 14 Ves. 177; *Vigrass v. Binfield*, 3 Mad. 62; *Rothwell v. Rothwell*, 2 Sim. & Stu. 217.—(n) *Osborn v. U. S. Bank*, 9 Wheat. 832; *Field v. Holland*, 6 Cran. 24.