In cases between vendors and purchasers of real estate, the purchaser, who is not in possession, cannot be called upon to pay in the purchase money until the title is completed; nor will the mere fact of his taking possession, entitle the vendor to call upon him for the payment of the purchase money into court. But if the purchaser, being in possession, exercises acts of ownership, he may be compelled to pay the purchase money into court. And the taking possession, and the acts of ownership, though not mentioned in the bill or answer, are the collateral facts which may be shewn by affidavits, or by proofs taken in a manner similar to those offered upon the present occasion. But, in such cases, that the purchase money is due, and the amount, are facts admitted and established; and whether it should be immediately brought in, or whether the purchaser should be indulged until final hearing, or how much short of that, are questions which depend upon equitable circumstances, not necessarily involved in the principal controversy, that never would be brought into view, but by such a motion. They are, therefore, truly and properly collateral circumstances.

But, in this case, the question is, whether, in the *direct* progress of a case, it has been established or admitted, that a party holding money has no title to it; and is, therefore, liable to be called on in this way. In this class of cases, it is a part of the principal matter in controversy—one of the circumstances of it; as much so as, in the other class, between vendor and purchaser, whether the purchase money was really due or not. And being necessarily involved in the main question, the court will not stop or delay the regular progress of the case to investigate or establish it by affidavits or proofs taken out of the regular order. The proof of possession, and the acts of ownership, lay the foundation of that equity which entitles the vendor to make the call for his money sooner than he otherwise could do; and, in that class of cases, it is said to be now quite decided, that, upon motions of this sort, affidavits of such collateral circumstances may be read, and that it was a practice to be encouraged, as it shortened pleading.(*o*)

But there is an obvious distinction between such collateral circumstances and peculiar equity, and the admission or establishment of facts, which go to shew the real title to the fund proposed

(*o*) Clarke *v.* Wilson, 15 Ves. 317; Cutler *v.* Simons, 2 Meriv. 103; Morgan *v.* Shaw, 2 Meriv. 138; Crutchley *v.* Jerningham, 2 Meriv. 502; Bramley *v.* Teal, 3 Mad. 219; Wickham *v.* Evered, 4 Mad. 53; Blackburn *v.* Starr, 6 Mad. 69; Wynne *v.* Griffith, 1 Sim. & Stu. 147; Gill *v.* Watson, 2 Sim. & Stu. 402.