

**250** plainant to the relief prayed, \* he cannot resort to the answer of the defendant, the proof taken in the case, or any extraneous matter to supply the defect, *Hovenden v. Annesley*, 2 *Scho. & Lefr.* 638; *Kemp v. Pryor*, 7 *Ves.* 240; *Wright v. Plumptre*, 3 *Mad.* 481; *West v. Hall*, 3 *H. & J.* 223; for no evidence can be received which is not applicable to some one of the material allegations of the bill; *Chicot v. Lequesne*, 2 *Ves.* 317; *Gordon v. Gordon*, 3 *Swan.* 472; but in order to remove any doubt as to what was intended by any indirect or ambiguous charge in it, its interrogating part, as well as its prayers for relief, may be material and proper to be considered for that purpose. *Muckleston v. Brown*, 6 *Ves.* 62; *Saxton v. Davis*, 18 *Ves.* 80.

The principal facts of which this case is composed, as set forth by the bill, and upon which alone the plaintiffs can have any claim to relief, are few and clear. They are these:—James M. Lingan, in May, 1807, conveyed four hundred and twenty acres of land to John Henderson, in fee simple, who then, or at any time after, gave no valuable consideration for it, but having obtained possession, retained it until his death. Which land Henderson was to account for with Lingan, either by holding it in trust to be reconveyed to Lingan, or by holding it as a purchase, and paying for it at the rate of thirteen dollars and thirty-three and one-third cents per acre, with interest thereon commencing one year after the day of sale; but which purchase money has not been paid: of which facts the plaintiffs, have no positive proof, sought a discovery from the defendants. Some years after entering into this contract, John Henderson died intestate, leaving a considerable estate, which passed into the hands of the defendants as his legal representatives. James M. Lingan also thereafter died, leaving the plaintiffs his legal representatives. These are all the material facts stated in the bill.

After a plaintiff has thus distinctly set forth the facts of which his case is constituted, shewing it to be one of which may properly be brought within the cognizance of a Court of equity, he may then proceed, in his bill, to specify and ask for that kind of relief, to which he thinks himself entitled. But if he expressly specifies the relief which he proposes to obtain, and prays for none other, either generally or specially; and the law will not allow the Court to give relief of that kind, or the peculiar nature of his case will not warrant the granting of any such relief, then he cannot be relieved at all, unless he consents to amend or alter the prayer of

**251** \* in his bill; for otherwise it must be dismissed. But, if the bill prays generally for such relief as is suited to the nature of the case, then, under such general prayer, the Court may, regardless of, or without any special prayer, grant any such relief as may be allowed by law, in consistency with the nature of the case, whether the plaintiff asks for it orally or not; *Beaumont v.*