

That Catherine Orbin, a daughter of Anthony Hook, on the first of January, 1805, executed a deed under seal to Hagthrop and wife as administratrix of John Hook, whereby she acknowledged the receipt of £121 0s. 0d. current money as the full amount of her proportion of her father's estate, and ratified, so far as it respected her part, the sales made by them. That the defendants Hagthrop and wife as administratrix of John Hook, at several times sold merchandise to a considerable amount to two other of the children of Anthony Hook, for which they gave receipts, as for so much to be deducted out of their respective distributive shares of their father's estate. And that Mary Hook, the widow and administratrix *de bonis non* of Anthony Hook, died sometime in the year 1805, after which administration was granted, as stated in the bill, to this plaintiff.

After the case had been set for hearing; the solicitors of the parties by a writing, filed on the 4th of November, 1826, agreed, that the bill be so amended as that the prayer for subpoena should include the name of James Hook.

BLAND, C., 5th December, 1826.—This case standing ready for hearing, and the counsel on both sides having been fully heard, the proceedings were read and considered.

It will be proper to recollect as we proceed with the exposition of this case, that this is a bill professedly for relief against these defendants, as the alleged unjust holders of certain specified assets of the plaintiff's intestate; and that therefore, if the plaintiff is entitled to relief of any kind, according to the nature of his case, he is, as a consequence of such right, entitled to an account from the defendants, of the rents and profits of the property so wrongfully held by them, and to a discovery from each as to all matters in relation to such an account. The plaintiff's title to relief is obviously and necessarily the first and preliminary question to be decided; for it would be idle to go into any account of rents and profits, or to ask for or to consider any discovery so made, if the plaintiff is not entitled to relief in some one form or other, according \*to the nature of his case; since no case can be sent to

**562** the auditor with directions to state an account in any way, unless it be first shewn, that the plaintiff is entitled to relief; nor can an account or discovery be directed in any case but as auxiliary to a previously ascertained or admitted right to relief. So that, if upon a demurrer, plea, or answer, before or at the final hearing it should be determined, that the plaintiff can have no relief, he can have no account, nor any discovery; and although the taking of the account may not be stayed pending an appeal from the adjudication in favor of the plaintiff's title. *Popham v. Bampffield*, 1 Vern. 83, 344; *Welford v. Leddel*, 2 Ves. 400; *Fitzgerald v. Burk*, 2 Atk. 397; *Jeffreys v. Baldwin*, Amb. 164; *Fry v.*