[110] presumed to be acquiescence ; but he clearly does not thereby acquiesce in the *correctness* of that account. No such presumption should be made against a party without manifest grounds for so doing. There is nothing here to preclude the defendant from his right to an account. It appears to us therefore that the decree was erroneous and defective. It has been argued that the matter should have been brought forward by a supplemental bill in the nature of a bill of review. We do not consider the present case to consist of supplemental matter at all ; nor subscribe to the argument that this decree cannot be set aside by motion. It was taken pro-confesso, which proceeds upon process of contempt. The only remaining question is upon what terms the defendant is to have the relief asked for. There are circumstances here which disentitle him to costs. It would have been but proper and candid on his part to have given the complainant notice of his intention to dispute the account. Independently of this, a considerable lapse of time has taken place since the order was made absolute. We therefore refuse costs. If this had been a question merely of *irregularity*, this application perhaps might have been too late. But this is a case between mortgagor and mortgagee. The precise value of the estate is not mentioned, but there is reason to suppose it is much more valuable than the debt. In cases between mortgagor and mortgagee the Court is always desirous to give the party simply what he contracted for ; and so long as this decree of foreclosure stands, it must operate as a bar.

Decree set aside without costs.

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[111] *IN EQUITY.*

RAJINDRO MULLICK *v.* RAMGOPAUL CHUND AND OTHERS.

(1847. *July 1st. Thursday*).

Practice ; injunction to stay trial at law. Bill of discovery.

In the case made by this motion, the injunction goes until answer, and cannot be opposed by affidavit.

INJUNCTION moved for (on motion) to restrain the defendants in equity from proceeding to trial in an action of ejectment (brought by them against the plaintiff in equity) until answer or further order.

Mr. *Dickens*, Mr. *Morton* and Mr. *Ritchie* appeared in support of the motion, which was supported by affidavit, stating the bill to have been filed for discovery, as well as to ascertain the existence of certain deeds relative to the property in question, without which discovery the defendant alleged he could not safely defend the action at law.

Mr. *Cochrane* and Mr. *Taylor* contra urged, that the complainant had not on his own affidavit disclosed a case for the allowance of the injunction, and proceeded to read affidavits in answer.

It was objected that affidavits could not on this motion be read as an answer and *O'Dowda against Rajah Dabeekistno* (a) was referred to as an authority to that effect.

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[111] (a) Montriou's Sup. Ct. Decisions, 66.

Per Curiam (b). It is clear that when a party files a bill of discovery, and states he cannot go safely to trial without it, the injunction to stay trial should go until answer, when the other side can move to dissolve; and affidavits cannot be read in opposition.

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[112] *IN EQUITY.*

BEHARRYRAM AND ANOTHER *v.* SEWEMBERAM AND KISSENPERSAUD.

(1847. *July 1st. Thursday).*

Practice—Pleading 28th Eq. rule Amendment of bill after plea allowed.

After plea allowed, the complainant will not be allowed to amend his bill, without stating fully the proposed amendments in his notice of motion.

MOTION, for an order "that the complainants have leave to amend their bill of complaint generally; and specially as against the defendant Kissenpersaud, upon payment of taxed costs of his plea, &c. and that so much of the order of this Court, whereby it was ordered that the bill of complaint should stand dismissed with costs as against the defendant Kissenpersaud without further order, unless the complainants should reply to the said plea within a fortnight from the date of the order, be discharged" (a).

The affidavit in support of the motion stated "that the amendments necessary, were statements to the effect that the defendant Kissenpersaud had personally taken part in the transactions and matters in the bill stated, to such an extent, or in such a manner, as to make himself personally liable in respect thereof to the complainants, whether as partner or agent."

Mr. *Colvile* (Adv. G.) and Mr. *Taylor* shewed cause. This motion is quite contrary to the practice. The plea in this case must be treated as if it had been argued and allowed on argument and comes clearly within the scope of the 28th equity rule (b).

The practice as to amendment of bills after plea filed, and after argument of plea is very different. In the former case amendments may be made upon payment of certain costs, but in the latter special grounds must always be stated. Treating this, then, as a plea allowed upon argument, the amendments required to be made **[113]** must be before the Court, in order that they may be enabled to ascertain whether the proposed amendments do or not involve the same facts as those disposed of in the plea. *Taylor* v. *Shaw* (a), *Barnett* v. *Grafton* (b) *Carleton* v. *Strange* (c).

The authorities cited also show that after plea allowed, the complainant cannot by amendment set up an entirely new case in his bill, for the purpose of avoiding the effect of the plea. In this instance, the attempt to do so is obvious. The proposed amendment seeks to charge Kissenpersaud either as

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[111] (b) Sir L. Peel, Sir H. Seton, and Sir J. Grant.

[112] (a) *Vide ante*, p. 83. (b) Sup. C. Eq. Orders, 8.

[113] (a) 2 Sim. & St. 12. (b) 8 Sim. 72.
(c) I Turner, 23.