

It was the well settled practice of the Court of Chancery of Maryland, under the Provincial Government, and has continued to be so ever since the establishment of the Republic, without any doubt or interruption, that in all cases where an account was required by the Court, or the parties, a special commission might issue, directing the commissioners to take testimony; "and also to state, audit, settle, and adjust all accounts relating to the matter in dispute, that should be produced to them;" and to reduce into writing such account; and to return the same, with the depositions of the witnesses. *Dorsey v. Hammond*, 1 *Bland*, 465. The Act of Assembly which authorized the Court to appoint an auditor, does not, in any respect, impair or abrogate the previous ancient practice; and therefore, special commissions, calling for the return of an account along with the proofs, have often been issued since the passage of that Act. *Clapham v. Thompson*, 1 *Bland*, 124, *note*; *Rutland v. Yates*, 1 *Bland*, 465, *note*.

Hence, as the Court might clothe commissioners, appointed to take testimony, with authority to state an account from the proofs collected by them; and as it appears that formerly, when a case was referred to a master to take the depositions of witnesses, upon oath; so it has been held, ever since the passage of the Act of Assembly authorizing the appointment of an auditor, that when a case is referred to the auditor, by any interlocutory decree to account; or by an order directing him to state an account, or make estimates, as in this instance, from the proofs then in the case, and such other proofs as may be laid before him, such a reference in itself clothes him with the power properly belonging to such an officer according to the ancient course; as if the case had been referred to a master in Chancery, or a special commission had been issued to take testimony and state an account: which, indeed, it is conceived, has been virtually affirmed by the Act of Assembly directing the appointment of an auditor, and authorizing him to administer an oath to all witnesses and persons proper to be examined upon such an account. (s) 1785, ch. 72, s. 17. Conse-

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(s) *CHESELDINE v. GORDON*.—This bill was filed on the 14th day of December, 1740, by Kenelmn Cheseldine against George Gordon and Kenelmn C. Jowles, executors of George Forbes, deceased, and Ann Greenfield, executrix of Thomas T. Greenfield, deceased, and Dryden Forbes, executrix of Henry P. Jowles, deceased. The bill states that Kenelmn Cheseldine made his will, by which he made sundry devises, and appointed his wife, the plaintiff's mother, his executrix; and also appointed Thomas T. Greenfield, now deceased, and the testator of the defendant Ann, and Henry P. Jowles, now deceased, and the testator of the defendant Dryden, as guardians of the plaintiff, his son and heir—soon after which, he died seized and possessed of several tracts of land. That the plaintiff was then about four years of age, and his mother and George Forbes entered upon, or continued in possession of the lands which had so descended, or been devised to the plaintiff; but that soon after, Thomas T. Greenfield, the testator of the defendant Ann,