of detinue, the record of the recovery, being only conclusive from that time.

But it is said, this court has no jurisdiction to grant the relief prayed by the bill, and I am quite free to confess, that the objection presses with much force. It certainly would have been better, if the objection had been taken at an earlier stage of the cause, and before so much expense had been incurred, in collecting proof and in conducting the proceedings down to the present time. Instead of doing this, the answers take defence upon the merits, and by an order of Somerset County Court, passed at its May term, 1847, *with the consent of parties*, the case was sent to the Auditor to state such accounts, as might be directed by their solicitors, upon the proofs then in the cause, and such other proofs as might be produced before him. Under this order, thus passed by consent, accounts have been stated, and a mass of evidence taken, at great expense, and now for the first time, at the trial upon the merits, exception is taken to the jurisdiction of this court. I do not lay any stress upon the circumstance that the objection is taken by way of exception, and not by an amended answer put in *at this time*, because, in my judgment, it is as competent to the defendant to interpose the objection in one form as the other. My unwillingness to listen to the objection proceeds upon the ground, that the defendant, by waving it in his answer and absolutely consenting to an account, has caused the expenditure unnecessarily of a large sum of money, and has secured, if his objection prevails, his final success in the controversy, because now, in an action at law, the plea of limitations would be a flat bar.

The bill was filed on the 11th day of May, 1840, the answer of the defendant on the 18th of May, 1841, nearly ten years ago, and now after the parties have gone on preparing their case for trial, on its merits, and after they had consented to go before the Auditor for an account, and when, if the complainant is turned round to pursue his remedy at law, he must be defeated by the plea of limitations, the court is asked to say it has no jurisdiction to try the cause and grant the relief prayed. If, to be sure, the want of jurisdiction is apparent, the delay and