

those dying or refusing to act, and any arbitrator or arbitrators so appointed shall have the same power and authority to decide the matter in question, as if appointed by the parties; and if an award be not returned within eight months after the cause may be referred as aforesaid, the court from which such cause shall be referred, may, by order, compel the arbitrators to return their award, or give their reasons for not returning an award, or the court may, in their discretion, upon motion of either of the parties, reinstate the cause, and take such order therein as they may think proper, to have the same fairly tried in court, in the same manner as if such cause never had been referred; and in all cases where awards may be made upon references aforesaid, the party in whose favour the award is given shall cause a copy thereof to be delivered to the adverse party or his attorney, at least three days before judgment is moved for upon such award, and the clerk of the court shall not enter judgment upon any award returned without a motion to and direction from the court, and the court shall always have satisfactory proof by the party's own oath, or affirmation, as the case may be, or otherwise, that a copy of the award hath been delivered to the adverse party or his attorney as aforesaid before judgment shall be directed to be entered on any award.

As to awards under the orphans' court, see 1798, ch. 101; 1834, ch. 228; see ante page 141, October, 1778, ch. 21, as to references of actions.

Court may
order ac-
counts to be
audited, &c.

SEC. 12. *And be it enacted*, That in all actions brought, or hereafter to be brought, in any court of law of this state, grounded upon an account, or in which it may be necessary to examine and determine on accounts between the parties, it shall and may be lawful for the court where such action may be or remain for trial to order the accounts and dealings between the parties to be audited and stated by an auditor or auditors to be appointed by such court, and there shall be such proceedings thereon as in cases of actions of accounts.

Jury may
find the sum
due, &c.

SEC. 13. *And be it enacted*, That in all cases of actions brought for the penalty of any bond, bill, covenant or contract, with penalty, the jury may, under the direction of the court, upon the plea of payment, or performance of the conditions or terms of the contract, ascertain, and by their verdict find, what sum of money or tobacco is really and justly due to the plaintiff, and upon such finding, judgment shall be entered by the court for the penalty, to be released upon payment of the sum of money or tobacco so found to be due, and interest on the same until paid, and costs of suit; and the sum really due as aforesaid, or in any other manner ascertained, upon bonds and other instruments of writing with penalty, shall be considered in law as the true debt, and shall be so pleaded by and allowed to executors, administrators, and others.