

time of receiving the money, or a release (which cannot be given in evidence under the plea of *ne unques receiver*, see the reason, *Willoughby v. Small*, 1 Brownl. 24,) or discharge from the matter of account, or accord and satisfaction, or that he has accounted before auditors assigned by the plaintiff, or to the plaintiff himself, or other pleas, which may be found in Comyn's, Viner's and Bacon's Abridgments under this title. It appears, however, that having rendered an account will not avail the defendant, unless it was satisfactory to the plaintiff, or shewed an agreed balance between them, *Baxter v. Hozier supra*. He cannot pay money into Court, Bull N. P. 128, though perhaps under the Code this would be otherwise with us, unless it should be held, as in England, that the provision, authorizing the payment of money into Court in all actions, extends only to cases where the money is paid in satisfaction of the cause of action, *Bp. of London v. McNiel*, 9 Exch. 490. Such defences as payment, acquittance and the like, admitting that the defendant was once chargeable and going in his discharge, should be reserved for pleading before the auditors. Issue is taken on the defendant's pleas and the case proceeds to trial of such issue, and if the plaintiff succeeds, judgment is entered that the defendant shall account, see *Godfrey v. Saunders supra*. But if the defendant make no defence in the first instance, the same judgment *quod computet* is given by default, which is an interlocutory judgment, but essential to the validity of the proceedings, *Hughes v. Burgess*, Ca. temp. Hardw. 394. This judgment directs the defendant to render a just account from the time mentioned, as it should **49** seem, in the *declaration, see the precedent, 2 Harr. Ent. 73, and a judgment for account after verdict for the plaintiff, *ibid.* 181.

Two or three auditors are then assigned by the Court to take the account, see Code, Art. 29, sec. 9.⁵ They give the defendant a day to make the account, at which day he must be in Court or elsewhere where the auditors appoint, and appear *de die in diem* for that purpose, or if the account cannot be furnished by the day given him, the auditors may enlarge the time; see the form, 2 Harr. Ent. 181. In *Beer v. Beer, supra*, the defendant asked the Court for an enlargement of the time on account of illness, to which it was objected that the auditors and not the Court were the judges as to the enlargement of the time, which seems to have been agreed. Formerly the defendant was obliged to find bail to account, and if he neglected to appear, a new *capias ad computandum* might issue against him at any time, or a *scire facias* went against the bail. The *capias* is now abolished; but if the defendant makes default at the day assigned the plaintiff recovers according to the value in the declaration. If the plaintiff do not appear on the

⁵ Under an order under this section of the Code directing the dealings between parties to a suit to be audited, the proceedings before the auditors must be the same as in actions of account after judgment *quod computet*. The auditors have no power to try all questions between the parties upon testimony taken, as if they were a jury; and an order empowering them thus to try the case is void; their report, under such invalid order, stating the amount due the plaintiff, is not admissible in evidence on a subsequent trial of the case before a jury. *Wisner v. Wilhelm*, 48 Md. 1. This decision was prior to the amendatory Act of 1888, ch. 447, see note 1 *supra*. Cf. *Lynn v. Cumberland*, 77 Md. 458.