

* The objections urged against this report indicate an opinion of the solicitor, that the auditor had somehow stepped beyond his proper sphere in making it as he has done. No officer should allow himself to deviate from the line of duty marked out for him by law. The auditor is properly a mere ministerial officer of the Court. It is true, that he may legally administer an oath to a witness and take his testimony in relation to an account desired to be stated; *Moore v. Aylet*, 2 *Dick.* 641; yet he has no judicial power; nor can the Legislature constitutionally confer any portion of the Chancellor's judicial power upon him. He is not in any sense an arbitrator; nor is his report, under any circumstances, considered as obligatory on the parties, unless confirmed by the Court. When a case is referred to arbitrators, the Court divests itself of all judgment, and the arbitrators are constituted judges of the fact without appeal; on a reference to the auditor it is otherwise,—he is only to prepare the case as a minister for the Chancellor who is really the Judge. *Field v. Holland*, 6 *Cran.* 21; *Dick v. Milligan*, 2 *Ves. jun.* 24. Nor can the auditor be allowed to act, in any manner, as a prying, pragmatistical agent, hunting up and collecting the means of making or sustaining any claim, or objection in relation to the matter in controversy. It is his duty to confine himself strictly to that which appears upon the face of the proceedings and proofs, and to abstain from suggesting any objection, prejudicial to any party, which the Court, in its regular course, would not, of itself, notice and sustain, if founded in fact. It is his duty to examine and digest accounts; to prepare the * materials on which a decree or final disposition of the case may be made; and to report the result of his examinations, subject to all exceptions of the parties, and to the further order of the Chancellor. On a consideration of this case it does not appear, that the auditor has in any respect departed from the proper line of his duty. *Le Sage v. Coussmaker*, 1 *Esp. Rep.* 187; *Field v. Holland*, 6 *Cran.* 21. **469**

According to the long established practice in creditors' suits it has been most usual, and particularly so of late years, to order the case to the auditor, or rather for the trustee or a party interested to take it to him, after the time allowed to other creditors to exhibit their claims has elapsed, and have an account stated and

which he is entitled to, and take his receipt in full, he will probably run no risk of being sued on his bond.

For illustration. N. Latcham appears, from the report aforesaid, entitled to the sum of £6 5s. 1d. out of the sum of £112 19s. 1½d. He is likewise entitled to his dividend of the interest, which the trustee shall receive on the said £112 19s. 1½d. Suppose two years interest to be paid on the said £112 19s. 1½d. This will be about £13 11s. 0d. Then as £112 19s. 1½d. is to £13 11s. 0d. so is the sum of £6 5s. 1d. to the additional sum which the said Latcham will be entitled to. So of the rest. **470**