

The Act of Assembly authorizing the appointment of auditors does not affect the right of the Court to issue a special commission directing the taking of testimony, and the stating of an account.

J. 212. Where a creditor seeks to offer new proof of his claim in the interval between the final report of the auditor, made under the directions of the Court, and its ratification, though it is not a matter of course, yet he will be allowed to do so under circumstances which would not entitle him to the privilege after the report has been ratified. *White v. Okisko Co.*, 3 Md. Ch. 214. When the fund to be distributed remains in Court, the application of a creditor whose claim has been omitted is entitled to favorable consideration if he has been guilty of no laches, and the claimant will be allowed to participate in the distribution. *Price v. Bank*, 29 Md. 369. But where a creditor has been notified and a reasonable time allowed him in which to support his claim by proof, and he fails to do so, an account rejecting his claim, if ratified, will not be opened at his instance to allow him to produce further proof, though the fund is still in the hands of the trustee. *Ohio Ins. Co. v. Winn*, 4 Md. Ch. 254. Where an order has been passed directing the auditor to state a final account, still, if the fund has not been parted with by the Court, creditors who had not come in at the period of the passage of such order will be allowed to do so, but new proof will not, after such order, be allowed in support of claims already filed. *Ibid.*

In all cases where a defendant is chargeable with the rents and profits of property; and wherever it may be necessary to ascertain the amount to be awarded to the plaintiff, it is of course to refer the case to the auditor, with directions to state such an account as the nature of the case may require, and such other accounts as either party may desire. But a reference to the auditor in such cases does not, of itself, place the parties in the reciprocal relation to each other of plaintiff and defendant, as on a bill for an account upon a dealing in trade, as in this instance, where, after a decree to account, both parties are considered as actors in relation to such account; and the final decree may be in favor of the one or the other, according as the balance may appear. *Hall v. McPherson*, 3 Bland, 534.

Exceptions to an auditor's report, filed before the action of the Court on the report and before the cause was submitted, are in time and ought to be considered, though not filed within the time limited in the previous order of ratification *nisi*. *Calvert v. Carter*, 18 Md. 75. The usual form of a decree for account is to direct the auditor to state the account from the pleadings and proofs in the case, and such further proofs as may be laid before him by the parties. *Ibid.* But it is competent for the Court to restrict the auditor to the pleadings and proofs *already in the cause*; and unless it clearly appears that material and pertinent evidence which it was in the power of the party to produce has been thereby excluded, it is no ground of reversal. *Ibid.*

Where an account contains so few items as to render it unnecessary to refer it to the auditor for adjustment, the Court in its discretion may perform this duty and ascertain the balance without the aid of an audit. *Korns v. Shaffer*, 27 Md. 83.

Testimony of a witness taken by the auditor, without authority of Court, after the account which it concerned had been filed, is inadmissible. *Dodge v. Stanhope*, 55 Md. 113.

An order finally ratifying an auditor's report and account is a decretal order, or an order in the nature of a final decree. *Thruston v. Devecon*, 30 Md. 210. On an appeal from the order ratifying the final audit in a proceeding in equity all the previous orders and decrees passed in the cause are