them, and that the said Gilbert Murdock might be compelled to remove the part of the said fence, erected since the service of the said injunction.

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award, when returned; and that each party shall be at liberty, notwithstanding, to appeal; in order that the Court of Appeals may reverse, or change his decree, in case his award shall be liable to such objection or objections, or contain such error or errors as might be deemed sufficient to set aside an award made by any other person.

The parties having considered this proposition and refused to accede to it, the case was again submitted.

HANSON, C., 15th November, 1799.—The complainants having verbally refused to comply with the proposition made by the Chancellor on the 5th instant, the Chancellor is under the necessity of deciding according to what he conceives the rules of law, and the established principles of this Court.

If the settlement made by the persons who are stated to have been appointed by the parties to decide between them, could be considered as a regular, final and complete award, it would not, in this Court, avail the complainant. It is notorious, that this Court never compels the performance of an award, merely as such, unless made under an order on the submission in Court of the parties. But the said settlement cannot be considered as an award. For, supposing that a submission to the said persons had been regularly made, it does not appear that the said settlement was ever declared and delivered as an award. If the said settlement is not to be considered as an award, in what other way can it be considered as effectual? Can it be received as evidence, that on the day of its date the balance stated to be due to Edward Norwood, was actually due to him? No! It is expressly stated, that the settlement was made chiefly from the books of the complainant; and all that can be inferred from it is, that the said persons were satisfied, that there was a certain balance due on a certain day from the defendant to the complainant. The second and third exceptions not having been insisted on by the defendant; and his counsel having in open Court expressly declared, that they would not insist upon the same.

It is hereby adjudged, that the first exception of the defendant be, and it is hereby admitted to be good; and that the second and third exceptions of the said defendant be, and they are hereby disallowed. It is further Ordered, that the auditor re-state the account No. 1, on such evidence as has been or shall be produced, not considering the settlement aforesaid as evidence. But it appears to the Chancellor, that the full sum of £400 for the difference in value of the land, &c. ought to be charged to the defendant, the persons appointed to value having by plain, unequivocal language, awarded it to be paid by him for the said difference. He is therefore to be charged with it.

On the 31st of January, 1800, the auditor, in obedience to this order, reported, that he had re-stated an account No. 6, between the complainant and defendant, on which there appeared due to the defendant £258 17s. 11d. including interest. That from exhibits filed by the defendant, he had stated another account, No. 7, on which there was due to the defendant £63 6s. 4d., including interest. But that the evidence from which it had been stated, were receipts for money stated to have been paid by the defendant on account of E. & S. Norwood, without any additional legal proof of the facts, as to the actual payments of the defendant, or the hand-writing of the per-