

or consent, in the matter imputed to him. William Murdock and Zachariah Johnson answered severally on oath; they say they did

Second, it was right for the auditor to take the average of the ferriages; what else could he do? Would a jury in fixing damages require proof of each receipt? No! The exception is disallowed. Third, there is no proof of any agreement or understanding between the parties, that the defendant was to be allowed for managing. Besides, it seems that the complainant managed likewise. Upon the whole, the claim seems improper, and the exception is accordingly disallowed. Fourth, account C, No. 5, it seems is an account of debits only, taken from the account settled by the arbitrators, and entered in Edward Norwood's books. The auditor rightly conceived it proper, that those books, which, for want of probates were not allowed as evidence for him, should not be taken against him. They were entirely laid aside, as was also the award. Fifth, this exception is indefinite and uncertain. It specifies nothing. It does not appear that the auditor has rejected any legal satisfactory proof. The exception is therefore disallowed. Sixth, It does not appear to the Chancellor that any item or article due to the defendant, is established and proved against the complainant by any of the persons or exhibits mentioned in this exception; and it is therefore disallowed.

It is, thereupon Ordered, That the auditor correct his account between the complainant and defendant, or state a new account between them, agreeably to the opinions of the Chancellor and principles herein contained; and that having so done, he return the said account to this Court, and that thereon the Chancellor will proceed to a final decree; that is to say, the account to be returned by the auditor shall not be liable to any exceptions: provided it be stated agreeably to the Chancellor's opinions aforesaid, and his decisions herein contained on the exceptions aforesaid of the complainant, and of the defendant. To admit new exceptions after what has passed, or to allow a correction or amendment of those exceptions on which the Chancellor has decided, would be unreasonable.

In obedience to this order the auditor, on the 22d of May, 1800, reported, that he had re-stated an account between the complainant and defendant, as directed, and there was due to the complainant £776 15s. 6d., including interest to the 31st day of January, 1800.

HANSON, C., 9th June, 1800.—The auditor of this Court having stated and returned an account, agreeably to the opinion of the Chancellor, and the principles expressed in the order or written declaration, containing the Chancellor's decision on the exceptions of each party to the preceding report:

It is thereupon Decreed, that the last stated account and report of the auditor be confirmed: that the defendant pay unto the complainant the sum of £776 15s. 6d., which is stated by the auditor to be due on the 31st day of January last, from the said defendant to the said complainant; and the said sum shall bear interest from the said day until the time of payment or levying thereof; and the said interest shall accordingly be paid or levied. And it is further Decreed, that the agreement stated in the bill for dividing the land called United Friendship, shall be carried into effect; and that accordingly the defendant by a good deed, to be acknowledged and recorded agreeably to law, shall give, grant, bargain, and sell, release, and confirm, and convey to the complainant and his heirs, all that part of the said tract of land called United Friendship, which has long been and now is in the said