

this cause was referred to the Auditor, with directions to state a final account, in which the plea of limitations as against claims numbered 4 and 6, was to be allowed in favor of Louis Mackall, Junior, the party relying upon the plea. And with reference to claim No. 5, that likewise was to be excluded so far as said Louis Mackall was concerned, unless it should be sufficiently proved at the time of stating the account, and for the purpose of enabling the claimant to supply the required proof, depositions upon the usual notice were authorized to be taken and filed in the Chancery office, on or before the 20th of the ensuing September. No proof having been taken under this authority, the Auditor has excluded the claim, and one of the questions now submitted for decision, is whether he was right in doing so.

It certainly was the opinion of the Court, when the former order was passed, that the proof in support of this claim was insufficient, and the Auditor was quite right, therefore, in excluding it, no additional evidence being offered in its support. I do not now understand it to be contended by the counsel for the claimant, that the *ex parte* deposition of Mr. Sollers is admissible, and it appears to me too plain for argument, that the certificate of Mr. Mitchell standing alone (conceding it to be admissible for any purpose which may, perhaps, be well doubted), is sufficient to establish this claim, because it does not establish the indispensable fact that the single bill ever existed as a genuine instrument.

And I may also now take occasion to say, as not wholly inappropriate, in view of the argument which has been made on behalf of the claimant, that I am quite satisfied that none of the depositions filed in support of these claims, 4, 5, and 6, are admissible. That of Dr. Parker is clearly inadmissible, as having been taken without notice, or anything that can be considered as amounting to notice; and those of Denton and Somerville not appearing to have been taken according to notice. The notice was that the depositions would be taken on the 12th of June, 1850, at the hour of 12 o'clock, M., at the residence of John Somerville, and although they appear