

well and faithfully execute the duties of the office conferred upon him. His report does not inform the court whether he did or did not do so, and the defendant has made this apparent omission to qualify, the ground of a special exception, and there can be no doubt that unless the Auditor did take the oath required by the order appointing him, that his proceedings were wholly irregular, and the accounts stated by him, unless this objection be waived, cannot furnish the foundation of a decree.

With this remark, the case as it now stands, might be disposed of, but in order to facilitate the future progress of the cause, I shall proceed very briefly to notice some of the exceptions to the report.

The defendant's first exception is directed against the discrimination which the Auditor has made in his account A., which is a copy or abstract of the balance sheet of the firm, and in which he places the assets in distinct columns, designating a portion as doubtful and others simply as "assets" without designation.

The exception insists that many of the claims ranged under the head of "assets," are in fact doubtful or not likely to be recovered. The Auditor, in a paper filed on the 18th of January, 1850, verified by his affidavit, states that this discrimination was made upon information derived from the defendant himself. But this statement of the Auditor cannot certainly be received as evidence, being *ex parte*, and not warranted by the terms of the order under which he was acting, which required that proof should be taken on *notice* to the parties.

The court could not, therefore, undertake to charge the defendant with the amount of assets placed in the column designated simply as such, nor can any settlement of the partnership accounts be made upon such basis.

---

[Other exceptions, which are not deemed material to be reported, were then considered by the Chancellor and sustained. As to the objection to the Auditor's fee, the following are the remarks of the Chancellor.]

---

The 25th exception objects to the amount of fees claimed by the special Auditor for preparing and stating the accounts.