

auditor shewed a balance in the defendant's hands, to which he was not entitled: in such case, after the time allowed to except to it, had expired; and after it had been confirmed, an order was granted to have the money brought into court.(j) And this not on the ground of any *admission* of the party; for the truth might have been, that he contested every item and every point before the auditor; but upon the ground, that the court was presented with facts in that stage of the case, which had been established in a due course of judicial proceeding, which could not thereafter be, in any manner, questioned or denied by the same party; for an order confirming a report of the auditor is, in this respect, a judgment of the court.(k)

The objects and inducements for making an interlocutory order, or partial decision of this kind, are to remove the fund out of danger; to place it in a state of the greatest security for the benefit of all concerned; and, by circumscribing the field of controversy, to accelerate the further progress of the case, and save costs; since it is evident, the parties will spin it out while they have the advantage of keeping the money.(l)

Hence it appears, that those who make this motion, must shew, that, however much more may be due, they have an *interest* in the sum of money proposed to be called in; and that he who holds it in his possession, has no equitable right or title to it whatever. And the facts on which these positions are to be based, must be found in the case as it then stands, either admitted, or so estab-

(j) *Gordon v. Rothley*, 3 Ves. 572; *Fox v. Mackreth*, 3 Bro. C. C. 45.

(k) *Brown v. Barkham*, 1 P. Will. 653.

TAYLOR v. WOOD—25th July, 1815.—KILTY, Chancellor.—The report of the auditor in this case was filed on the 25th of March last, and having laid during the present term without any exception being filed thereto, is liable to be confirmed, or otherwise acted on without further notice. And it is now taken up, on motion of the complainant. The balance reported as due from or in the hands of the defendants, Owens & Smith, is \$13,925 29. Against this there are some further credits, which are extended, but not yet established or allowed, which, if allowed, would reduce the balance to \$11,837 35.

On the present state of the accounts, it is Ordered, that the said Owens & Smith do forthwith deposit in the Farmers Bank of Maryland, to the credit of the estate of William Robb, the sum of \$13,337 35, which will be liable to a deduction and return of the further credits for expenses and commission, if allowed, and also the sum of \$1509, claimed on account of A. Stewart, if established. The balance then remaining will be subject to the order of the court, on a further report to be made by the auditor as to the claim of the creditors, including the defendants.

(l) *Roberts v. Hartley*, 1 Bro. C. C. 56; *Gordon v. Rothley*, 3 Ves. 572.