

he should not be suffered to make any statements derived from the testimony of incompetent witnesses or illegal evidence. Therefore these objections do not come now too late, and must be decided on for the government of the auditor.

The Chancellor considers it as sufficiently apparent, upon the proceedings, without going into a statement of the case, and his reasons, that *John Rogers*, the defendant, is an interested witness; and therefore, the whole of his testimony must be rejected.^(o) The reading of the deposition of *Alexander Irvine*, has also been objected to, on the ground of his interest. It does not, however, sufficiently appear, that he was a creditor of *Rogers*, and interested at the time; and therefore the objection to his testimony must be overruled. A paper purporting to be the answer of *Strike* to a petition of the complainants filed in *Baltimore County Court* against him, has been insisted on as applicable and furnishing evidence pertinent to this case. But from its phraseology and general tenor, it is evident, that it cannot be a part of the pleadings in this suit; and without the other proceedings, to which it purports to be an answer, it cannot be evidence in this cause, and must be rejected.

With these explanations, determinations and directions, the case is referred to the auditor to state an account accordingly; and the several exceptions, as well of the plaintiffs as of the defendants, to the auditor's statements and reports heretofore made, so far as the same are inconsistent with the determinations and directions herein before given, are overruled, and so far as they may agree therewith, are sustained.

The complainants afterwards filed a petition stating, that they originally employed as their counsel *Henry M. Murray* and *Henry W. Rogers*, and agreed with them, in case of the successful termination of this case, by a final decree against *Strike* in this court, to pay them ten *per cent.* each, on the amount of the proceeds of the suit, as a compensation for their services, subject to a deduction of whatever moneys should be paid to them in the mean time, on the account of this suit; and that after the interlocutory decree was obtained, *Murray* and *Rogers* applied to *Baltimore County Court* to fix their per centage on the amount then received by the sale under the decree, while this suit was pending there, which

(o) *Murray v. Shadwell*, 2 Ves. & Bea. 401.