

when a certain *William Murdock* and *Zachariah Johnson*, of the city of Annapolis, well knowing that the said injunction had been

*Decreed*, that the defendant account with the complainant for one-half of the profits of the ferry in the bill mentioned, from the time when the defendant took, and so long as he has retained the whole profits thereof; that the parties shall further account with each other relative to all debts whatever, arising on the agreement aforesaid or otherwise. That the auditor state the account or accounts between the parties on notice to them given, and from the proofs in this cause, or other competent legal proofs which shall to him be produced; and that having stated the account or accounts he shall report and return the same, subject to the exceptions of either party, and to be done with as shall seem just.

N. B.—The complainant's bill alleges, that the new ferry is set up at a distance of about twenty yards. The defendant's answer, says, that the new ferry is lower down, on his own land. But whether there are different roads, &c. as before mentioned, is not yet established.

On the 28th of March, 1799, the defendant, by his petition, on oath, stated, that for many years from the time of the death of his father, the accounts of the profits and expenditures of the land called *United Friendship*, to which the ferry was alleged to belong, were kept in certain books of accounts, or entries, which contain also the general accounts between them, as well relative to the said farm and ferry, as other transactions concerning their father's estate, and their common concerns, which he cannot otherwise identify than by reference to their subject matter, were left in the possession of the plaintiff, and were then in his possession or under his control; that this defendant expects to prove by them various charges, for which he has no other proof. Whereupon, it was prayed, that they might be produced before the auditor, &c.

28th March, 1799.—HANSON, Chancellor.—Ordered, that the complainant do forthwith produce to, and lodge with the auditor for the purpose of his stating an account between the parties, every book in his, the complainant's possession, which contains any entry, memorandum, or statement, relative to the matter in dispute between them; and to the account to be stated in conformity to the decree in this cause lately passed.

On the 13th of April, 1799, the auditor filed a report, in which he said, that in obedience to the decree, after having given notice to the parties, and having received what further testimony they chose to produce, he had stated accounts Nos. 1, 2, 3, 4, and 5. That account No. 1, was a copy from the books of complainant, commencing in the year 1775, which appeared to have been adjusted and settled by arbitrators, and after charging interest, the balance struck on the 14th of June, 1787, which then amounted to £160 0s. 4d. That for this account there did not appear any other evidence, or voucher, except the waste books and ledger, lodged by the complainant where the original entries appeared to have been made. That No. 2, was an account of the ferriages received by the complainant for his proportion of tolls as entered in his cash book monthly, commencing on the 23d of May, 1786, to the 31st of October, 1796. And from this view of the profits, the auditor had made an estimate on the back of said account of the probable monthly receipts at said ferry. That No. 3, was an account stated from the balance on account No. 1, which was stated in that manner, in order that the private accounts, and the account for the profits of the ferry might be distinct. That in this account, the defendant had credit for his half of £145 7s. 9½d. being sundry receipts which he had exhibited, and