tinued, and completed the erection of said fence, in direct violation of the said injunction. Whereupon he prayed for an attachment

---

report; it was determined that the said order be rescinded, and that the said exceptions be debated. The argument of the counsel on each side was accordingly heard and considered.

The present cause appears to the Chancellor to be one of those cases in which it is extremely difficult, if not altogether impracticable, for him to do complete justice without violating strict law, which he is not at liberty to dispense with, and departing from established principles. He therefore feels himself under embarrasment, and to relieve himself from it, as well as to make an end, in the most eligible manner, of a contest, which hath been attended with much expense, delay, and vexation, he thinks proper, before he proceeds to a decision on the argument, or gives any intimation of his opinion relative to its merits, to make a proposition, on which he requests the parties immediately to determine. His proposition is, that the parties, by writing, to be here filed, shall submit to him, as an arbitrator, all matters in dispute between them in this cause; and that an order be thereon passed by consent, for submitting as aforesaid, and that a decree be passed on his award, when returned; and that each party shall be at liberty, notwithstanding, to appeal; in order that the Court of Appeals may reverse, or change his decree, in case his award shall be liable to such objection or objections, or contain such error or errrors as might be deemed sufficient to set aside an award made by any other person.

The parties having considered this proposition and refused to accede to it, the case was again submitted.

15*th November*, 1799.—HANSON, *Chancellor*.—The complainant having verbally refused to comply with the proposition made by the Chancellor on the 5th instant, the Chancellor is under the necessity of deciding according to what he conceives the rules of law, and the established principles of this court.

If the settlement made by the persons who are stated to have been appointed by the parties to decide between them, could be considered as a regular, final and complete award, it would not, in this court, avail the complainant. It is notorious, that this court never compels the performance of an award, merely as such, unless made under an order on the submission in court of the parties. But the said settlement cannot be considered as an award. For, supposing that a submission to the said persons had been regularly made, it does not appear that the said settlement was ever declared and delivered as an award. If the said settlement is not to be considered as an award, in what other way can it be considered as effectual? Can it be received as evidence, that on the day of its date the balance stated to be due to Edward Norwood, was actually due to him? No! It is expressly stated, that the settlement was made chiefly from the books of the complainant; and all that can be inferred from it is, that the said persons were satisfied, that there was a certain balance due on a certain day from the defendant to the complainant. The second and third exceptions not having been insisted on by the defendant; and his counsel having in open court expressly declared, that they would not insist upon the same.

It is hereby adjudged, that the first exception of the defendant be, and it is hereby admitted to be good; and that the second and third exceptions of the said defendant be, and they are hereby disallowed. It is further *Ordered*, that the auditor re-state the account No. 1, on such evidence as has been or shall be produced, not considering the settlement aforesaid as evidence. But it appears to the Chancellor, that the full sum of £400 for the difference in value of the land, &c. ought to be charged to the defendant, the persons appointed to value having by plain, unequi-