against them, and that the said *Gilbert Murdock* might be compelled to remove the part of the said fence, erected since the service of the said injunction.

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vocal language, awarded it to be paid by him for the said difference. He is therefore to be charged with it.

On the 31st of January, 1800, the auditor, in obedience to this order, reported, that he had re-stated an account No. 6, between the complainant and defendant, on which there appeared due to the defendant £258 17*s.* 11*d.* including interest. That from exhibits filed by the defendant, he had stated another account, No. 7, on which there was due to the defendant £63 6*s.* 4*d.*, including interest. But that the evidence from which it had been stated, were receipts for money stated to have been paid by the defendant on account of E. & S. Norwood, without any additional legal proof of the facts, as to the actual payments of the defendant, or the hand-writing of the persons to whom such sums were stated to have been paid; that he had therefore stated the account No. 7, distinct from account No. 6. That he had stated in No. 8, a summary of the testimony taken before him, and from the additional testimony and exhibits filed by the parties; on which he had made sundry remarks, and stated his objections to such parts thereof as ought to be rejected. That the complainant had filed three waste books, one cash book, and one ledger marked E. N. No. 1; E. N. No. 2; E. N. No. 3; E. N. No. 4; and E. N. No. 5; but from which the auditor had made no extract or charge; those books not being proved or admitted as legal testimony by the defendant. They appear to have been filed to prove the defendant's knowledge of the accounts therein stated, many of the entries having been made, as proved by the deposition of a witness, in the hand-writing of the defendant. That he had also stated account No. 9, wherein he had brought the balances due the complainant on the accounts Nos. 4 and 5, for the ferry, and the balances due the defendant on accounts No. 6 and 7, which left a balance due the complainant of £456 12*s.* 8*d.*, including interest to that date. That he had also stated account No. 10, taking the balance due the complainant for the ferry, and the balance due the defendant on account No. 6, leaving out No. 7, in case it should not be allowed, which left a balance due the complainant of £519 19*s.* 0*d.*, including interest.

To this report of the auditor, the plaintiff, on the 19th of April, 1800, excepted; *first*; for that the auditor hath charged the complainant with the sum of £63 6*s.* 4*d.*, being the amount of account No. 7, although there is no proof to establish any of the items contained in said account; and therefore, the same ought not to have been allowed; *second*, for that the auditor hath omitted to charge the defendant with sundry sums of money, and with sundry articles properly chargeable in account. All of which are particularized and enumerated in the books of accounts, marked E. N. No. 1, to E. N. No. 5, inclusive; although the defendant, in sundry instances, hath charged himself therewith, in his own hand-writing; *third*, for that the said auditor hath charged the complainant in account No. 6, with the sum of £537 12*s.* 7*d.*, for difference of the buildings, without allowing him any credit for materials found, and for payments made to workmen for erecting the same; *fourth*, for that the said auditor hath charged the complainant with the amount of the accounts Nos. 6 and 7; although the said accounts originated and accrued more than three years before the filing of the original bill in this cause. And therefore, now barred by the act of limitations. Which said act of limitations, the complainant insists on, in bar to the said accounts, and all other accounts between the said parties, existing for three years previous to filing the said original bill in this case.