

del county, and had received the rents and profits of the said land for six years; but had never accounted with the Orphans Court, as guardian, for any other sum of money than the balance remaining, after deducting from the gross amount of rents and profits, the sum of \$60 per year. Whereupon they prayed, that a commission might be issued; or some order passed to enable them to obtain the benefit of the said testimony, &c.

Upon which the Chancellor expressed a wish to hear counsel; and for that purpose *Ordered*, that the matter should stand over until further order. But the matter was not again moved on behalf of the infant defendants.

12th August, 1829.—BLAND, Chancellor.—This case standing ready for hearing, and having been submitted on notes by the solicitors of the parties, the proceedings were read and considered.

It was the well settled practice of the Court of Chancery of Maryland, under the provincial government, and has continued to be so ever since the establishment of the republic, without any doubt or interruption, that in all cases where an account was required by the court, or the parties, a special commission might issue, directing the commissioners to take testimony; 'and also to state, audit, settle, and adjust all accounts relating to the matter in dispute, that should be produced to them;' and to reduce into writing such account; and to return the same, with the depositions of the witnesses. (i) The act of assembly which authorized the court to appoint an auditor, does not, in any respect, impair or abrogate the previous ancient practice; and therefore, special commissions, calling for the return of an account along with the proofs, have often been issued since the passage of that act. (j)

Hence, as the court might clothe commissioners, appointed to take testimony, with authority to state an account from the proofs collected by them; and as it appears that formerly, when a case was referred to a master to take the depositions of witnesses, upon oath; so it has been held, ever since the passage of the act of assembly authorizing the appointment of an auditor, that when a case is referred to the auditor, by any interlocutory decree to account; or by an order directing him to state an account, or make estimates, as in this instance, from the proofs then in the case, and such other proofs as may be laid before him, such a reference in itself clothes him with the power properly belonging

(i) *Dorsey v. Hammond*, 1 Bland, 465.—(j) *Clapham v. Thompson*, 1 Bland, 124, note; *Rutland v. Yates*, 1 Bland, 465, note.