

to such an officer according to the ancient course; as if the case had been referred to a master in chancery, or a special commission had been issued to take testimony and state an account: which, indeed, it is conceived, has been virtually affirmed by the act of assembly directing the appointment of an auditor, and authorizing him to administer an oath to all witnesses and persons proper to be examined upon such account. (k) Consequently, all the testi-

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(k) 1785, ch. 72, s. 17.—*CHESELDINE v. GORDON*.—This bill was filed on the 14th day of December, 1740, by Kenelm Cheseldine against George Gordon and Kenelm C. Jowles, executors of George Forbes, deceased, and Ann Greenfield, executrix of Thomas T. Greenfield, deceased, and Dryden Forbes, executrix of Henry P. Jowles, deceased. The bill states that Kenelm Cheseldine made his will, by which he made sundry devises, and appointed his wife, the plaintiff's mother, his executrix; and also appointed Thomas T. Greenfield, now deceased, and the testator of the defendant Ann, and Henry P. Jowles, now deceased, and the testator of the defendant Dryden, as guardians of the plaintiff, his son and heir—soon after which, he died seized and possessed of several tracts of land. That the plaintiff was then about four years of age, and his mother and George Forbes entered upon, or continued in possession of the lands which had so descended, or been devised to the plaintiff; but that soon after, Thomas T. Greenfield, the testator of the defendant Ann, and Henry P. Jowles, the testator of the defendant Dryden, forcibly took possession of all the lands which had so descended, or been devised to the plaintiff, and held possession thereof until after he attained his full age, and recovered the same, from those who claimed under them, by actions of ejectment. (*Cheseldine's lesse v. Brewer*, 1 *H. and McH.* 152.) That they sold timber from the land, and took all the rents and profits thereof without rendering any account whatever, or paying any thing for the same; or allowing any thing for the support and education of the plaintiff. Whereupon, it was prayed that the defendants might render an account of the rents and profits, and the interest thereof, which were or might have been of the plaintiff's lands; and that the plaintiff might be otherwise relieved in the premises according to equity.

The defendants answered separately, but all nearly to the same effect. They admitted that the said Kenelm Cheseldine had made his will, appointing guardians to his pretended children; and soon after died seized of several tracts of land; but denied that he had, or could devise the lands in question to the plaintiff; because they were held by him, as devisee in tail, from his father, with remainder over, on failure of issue, to his three sisters; and, he dying without lawful issue, the lands passed accordingly to the testators of these defendants. They further admit, that when his alleged father died, he was about four years of age. These defendants in answer, say, that a certain Mary Sheppard, the complainant's mother, who lived at the house of his alleged father, at the time of his death, in a short time thereafter, removed from it, and quietly delivered possession of the house and plantation to Messrs. George Forbes, Henry P. Jowles, and Thomas T. Greenfield, on behalf of themselves, and their wives, the devisees in remainder, without any demand of dower, or other right therein; and that they entered upon, and took possession of the lands, and received the rents and profits accordingly. These defendants further admit, that the plaintiff brought an action of ejectment, and recovered as stated; but allege, that no actual marriage was proved on the trial in that action, to have been had between the said Mary Sheppard and the said Kenelm Cheseldine, the puta-