

between the solicitors, the return of the commission had been delayed, at the instance, and for the convenience of the defendants, in order that they might, if they thought proper, take any testimony they wished; but that the plaintiffs were not to lose the benefit of having the commission returned as before the December term. At the following March term the case was again brought before the court.

15th March, 1831.—BLAND, *Chancellor*.—On motion of the plaintiff's solicitor, it is *Ordered*, that this case be and the same is hereby referred to the auditor, with directions to state such an account as the nature of the case may render necessary; and such other accounts as either party may require.

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After which the auditor, on the 3d of June, 1831, reported and filed a statement of an account between *John Odom*, and the owners of the schooner *Beauty*, shewing a balance of \$5,634 82, to be due to the plaintiff *McKim*. To which the defendants filed exceptions, and the case was again presented to the court.

10th August, 1831.—BLAND, *Chancellor*.—This case standing ready for hearing, and having been submitted on notes by the solicitor of the plaintiff, and no one appearing for the defendants before the close of the sittings of the term according to the rule of the court, the proceedings were read and considered.

Considering the pleadings as they now stand, and the manner in which the case has been brought before the court, the general replication has denied and put in issue every thing alleged by way of avoidance in the answers. All which matters must, therefore, be rejected; except, in so far as they may be found to have been substantiated by proof. The auditor was correct, therefore, in charging *Odom* with the whole amount of what he, in any way, had admitted he had received as the proceeds of the sale, or for the earnings of the schooner *Beauty*; and in rejecting all claims for disbursements on account of that vessel of which there was no evidence, other than the answers and mere exhibits of the defendants.

There is, however, some evidence in support of some of the claims made by the defendant *Law*, as ship's husband; and besides as to these the plaintiff's solicitor, in his notes, has distinctly admitted, that the defendants are entitled to a credit for \$453 23, which has not been allowed by the auditor; and therefore, the auditor's report must be rejected, and the plaintiff *McKim* must have a decree for the balance.