understood the Alligations of the Parties on both sides, but more Perticularly an account which the Said Defendant produced and made Oath upon the Same . . . which was adjudged a Sufficient Barr against the aforesaid Action." It was thereupon adjudged that plaintiffs take nothing by their writ. In this case it is difficult to determine whether defendant's account was considered in connection with the pleadings or at the trial stage of the action. In a similar action of trespass on the case on an account at the same term, *Wilson's Executors* v. *Herbert,* defendant's attorney pleaded "that he oweth not the Said Plantiffs the Said 1038 pounds of Tobacco nor any part thereof alleageing that the Said Defendant had an account against the Said Jonathan Willson for twelve hundred 21 pounds of Tobacco which was Proovd in open Court by the Oath of the Said Defendant as by the Said Account filed may appear" and put himself upon the court, as did plaintiff. The *Liber* then notes that the "Court, haveing read and Fully understood the alligations on both Sides but More perticularly the account the Defendant made oath upon in Barr of the Said Action", adjudged that plaintiffs take nothing by their writ. In this case defendant's account was apparently considered in connection with the pleadings. [49]

In a third case at the same term of a similar nature (*Lowther* v. *Mahony*) defendant pleaded the general issue and both parties put themselves on the court. The "Wittnesses on both sides being fully heard", the court allowed an account of defendant "in barr of Part of the Said Sume the Defendant was then Sued for." Here the matter in bar was apparently not pleaded but proved under the general issue at the trial stage. In *Willson's Executors* v. *Rooke,* at the same court, defendant appeared in person and, apparently instead of answering, produced an account against the decedent and made oath upon the same that he had not received any part thereof "which Said account and Oath made thereupon was by the Court thought Sufficient in Barr of the action the Said Defendant was then Sued for." Judgment was accordingly given that plaintiffs take nothing by their writ. In *Taney* v. *Small,* at the same court, defendant's attorney alleged that defendant had paid part of the debt sued for and in proof thereof produced a note or order to pay one William Jones or his order the sum of nine hundred pounds of tobacco which note was paid as by receipt appeared but as to the remainder of the debt sued for pleaded *nihil dicit.* Without any notation that defendant put himself upon the court, the court then proceeded to give judgment for plaintiff for 2100 pounds of tobacco, the remainder of the sum sued for, plus costs and charges of suit. [50]

As observed earlier, many declarations in suits for the balance of an account recited that a copy of the account was annexed to the declaration or produced in court. While direct evidence is lacking it seems likely that it was a practice or requirement to file such accounts with the declaration. In some cases in which actions were brought by executors or administrators, the *Liber* notes that copies of the letters testamentary or letters of administration were produced in court. In a third group of cases profert was made of writings obligatory, the declaration relating that the instrument sued on was produced in court. In one case involving non-acceptance of a bill of exchange, profert was made of the instrument of protest.

In some cases of profert of a writing obligatory defendant's attorney appeared and, either before or after imparling, craved oyer of the instrument sued on. The document was then read or shown to him. Then he might pray oyer of the condition of the writing obligatory and that would be read or shown to him. In English practice when oyer of a document was demanded, it was read aloud in court and

49. *Infra* 585–87, 584–85.
50. *Infra* 596–97, 600–01, 573–74.