

Account. Fitz. Brief, 791, 806. Fitz. Process, 203. Fitz. Exigent, 12. 1 Roll. 182. 2 Inst. 143.

Waste. Mirror 320. 5 Co. 17. Dyer, f. 281. Fitz. Wast. 12, 22, 30, 32, 37, 42, 43, 46, 47, 48, 53, 68, 69, 76, 78, 82, 88. 4 Co. 63. Rast. 689. 2 Inst. 144. 6 Ed. 1, Stat. 1, c. 5.

Sec. 1. Account.—The action of account is recognized as a subsisting remedy in Maryland by the Act of 1785, ch. 80, sec. 12, Code, Art. 29, sec. 9,¹ and Art. 2, sec. 1;² and see *Perkins v. Turner*, 1 H. & McH. 400; *Hamilton v. Conine*, 28 Md. 635. The opportunity which the defendant has of delaying the proceedings by raising before the Auditors a succession of issues, triable in a formal manner like so many different actions, has brought it into disuse, *Ex parte Bax*. 2 Ves. 388. But the action is sometimes available where others are not, as it is the only action except one on his bond, which can be brought against a guardian *qua* guardian in a Court of law, *Green v. Johnson*, 3 G. & J. 389; and in *Vin. Abr. Acct. M. 15*, a case is mentioned where a plea of judgment for the defendant in trover for malt was held no bar to an action of account for the proceeds. The ordinary course here, however, is to proceed in equity, where the remedy is supposed to be much more expeditious and more fair to both parties. Yet in *Godfrey v. Saunders*, 3 Wils. 47, an account was taken of complicated transactions in two years after twelve years useless litigation in Chancery, and see *Baxter v. Hozier*, 5 Bing. N. C. 288.

Against whom action lies.—The action lay at common law against guardians, bailiffs, (a bailiff being defined as a servant who has charge and administration of lands, goods and chattels for the purpose of making the best profit or benefit to the owner,) receivers and factors, 2 Inst. 279, but not against servants or apprentices, except upon collateral receipts, nor against infants, *Co. Litt. 172 a*, and it was also the recognized remedy between merchants. By Statutes 13 E. 1, c. 23; 25 E. 3, c. 5, and 31 E. 3, c. 11, the action is given to executors of a merchant, to executors of executors and to administrators; and by 4 Ann. c. 16, s. 27, it may be brought against the representatives of guardians, bailiffs and receivers, and by one joint tenant or tenant in common, and his representatives against the other, an action for money had and received not lying in such a case, *Thomas v. Thomas*, 5 Exch. 28. The three former Statutes do not extend here, being superseded by our Testamentary law.

It is laid down in the books that two things are necessary in general to the maintenance of the action; 1°, that the account should not be adjusted

¹ This section, as amended by the Act of 1888, ch. 447, is now as follows: "In all actions brought in any court founded on account, or on which it may be necessary to examine and determine on accounts between the parties, the court may order the accounts and dealings between the parties to be audited and stated by an auditor or auditors to be appointed by such court, and there shall be the same proceedings thereon as in courts of equity upon bills for an account, reserving to the parties, however, the right to a jury trial if demanded." Code 1911, Art. 26, sec. 9.

² Code 1911, Art. 75, sec. 25. See also Art. 57, sec. 1.