

of the court. He is stationed near to the Chancellor, and, when any calculations or statements are wanted, all the pleadings, exhibits and proofs are put into his hands, so as to enable him fully to investigate, and put the whole matter in proper order as required. As an incident to every reference of a case to the auditor, he is thereby virtually, if not expressly, as under a commission to audit accounts, authorized to take any testimony deemed requisite in relation to any account which may be necessary or which the parties may desire to be stated by him.(c) But, if it be necessary to collect proof from a distance, the parties may either have a regular commission, or be allowed, by a common order, to have it taken any where within the State, before any justice of the peace, on giving notice to the opposite party. All the materials, from which the auditor makes his calculations and statements preparatory to a final adjudication upon the matters in controversy, are thus, by various, cheap, and contemporaneous movements, brought together at one place, and before an officer conversant with the rules and principles by which the case is to be decided, by a court constantly stationary and always accessible. With such facilities, where the parties are themselves diligent, there can be no unreasonable delay, nor any difficulty, but what arises out of the peculiar ambiguity of the proofs, or the real complexity of the case.

The costs of the court are no more, in any case, than a just compensation for the labour required. The auditor's fees are considered as a part of the costs; and, as such, are always included in every general award of costs against a plaintiff or defendant; and the payment of them may be enforced, against the party properly chargeable, in the first instance, in the same summary manner as any other costs.(d) But in some cases it becomes a matter of doubt who is properly chargeable, in the first instance, with the auditor's fees. The law declares, that they are to be "paid by the party *desiring* such account to be stated." Upon which it has been held, that in all cases where an account is necessary in any manner to ascertain the claim of a party, he alone is chargeable, although he may not have specially *desired* the account; and in all other cases, where a party particularly instructs the auditor to state an account in a certain way, he alone is chargeable, upon the ground of its having been specially desired

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(c) Prac. Reg. 309.—(d) *Denny v. Wallace & Davidson*, MS. 1806; *Farrow v. White*, 1 Jac. & Walk. 623.