

And this unwillingness on the part of the Courts to permit a defendant to change, or add to, the grounds of defence set up in the first answer, is certainly not diminished when the application is made after the opinion of the Court and the testimony have indicated how it may be modified to accomplish his purpose. *Calloway vs. Dobson*, 1 *Brock*, 119. Had the application, therefore, in this case been made to this Court after its judgment was pronounced upon the proofs and pleadings before it, at that time, and prior to the order of the Court of Appeals remanding the cause for further proceedings, it seems to me to be quite clear, that, according to the well-established practice of the Court, it would have been rejected, and consequently the first and the additional exception filed by the complainant to the amended answer in this case would have been sustained, as, in the order of the 3d of March last, giving leave to file an amended answer, in conformity with the order of the Court of Appeals, it was intended that the privilege should go no further than that order allowed, and that the amended answer, when filed, should be subject to exceptions if it transcended it.

In the opinion and order of this Court, of the 22d of November, 1848, the cause was referred to the Auditor, with directions to state an account, in conformity with the principles which, in my judgment, in the then condition of the cause, should govern it; and the complainant was given liberty to surcharge and falsify the settlement of the 1st of June, 1844, in several particulars specified in the opinion; but inasmuch as the defendant, standing upon that settlement as a compromise of conflicting claims, did not seek to surcharge and falsify, the order of this Court necessarily limited the right to the complainant, so that every error in the accounts upon which the settlement was made injurious to the defendant (if any such there be), could not be examined into or corrected. In this state of the cause an appeal was taken by the defendant to the Court of Appeals, which, at its December term last, passed an order remanding the record to this Court, under the provisions of the 6th section of the Act of 1832, ch. 302, without reversing or