

the whole record, that the Appellate Court passed its order irrespective of any such consideration. It was from the record before them that they came to the conclusion that justice required that the privilege of impeaching the settlement should be mutual, and there was and could have been no pretence for saying that the facts contained in the record, upon which the Court of Appeals acted, were not known to the defendant when the original answer was filed, or when the cause was first heard in this Court. My opinion, therefore, is, that the exception on this ground cannot be supported.

The other exceptions maintain, that many of the particulars in respect of which the defendant proposes to surcharge and falsify the settlement were conclusively adjudicated by the former order of this Court, and as the Court of Appeals concurred in that order, and the reasons upon which it was passed, nothing settled by it is now open.

I have carefully read over the answer, and compared it with the former opinion and decision of this Court, and do not find it obnoxious to this objection. It does not propose to relitigate what has been already adjudged, though it does propose, in some instances, by counter charges, to show that sums which were allowed the complainant have been paid. It would be tedious, and indeed, pressed as I am at this time, it would be impossible to go in detail over the various points adjudicated by the Court, by the order of November, 1848, and specify particularly why I think the amended answer does not propose to retry or controvert them. But one or two points will be adverted to as examples.

The first error adjudged to exist in the account, was that the complainant was entitled to be credited with dividends upon the whole capital invested in the Savage Railroad Company, and this the defendant does not, and cannot now be allowed to dispute.

Second, that it was erroneous to charge the complainant with ten per cent. on the cash balances in this account; and this, therefore, is no longer open to, nor does the amended answer propose to call it in question. Third, that the sum of