$1,350 was charged twice, when from the proof then before me, I was of opinion it should not have been charged at all. Now the judgment of the Court, in reference to this item, the answer does not controvert, that is, it does not deny that as the account then stood, it was twice debited to the complainant, when he was not liable at all. But the opinion of the Court was expressly founded upon the case as it then stood, and the proof then in the record; and as leave was given, in the order referring the case to the Auditor, to take further proof, it would have been competent to the defendant to have offered further proof in support of this item of charge. The opinion of the Court did not preclude either party from producing additional evidence in regard to this item, and as the complainant was not debarred from the right to offer evidence in support of his claim, to have stricken from the account the sum of $2,353 33, alleged to have been paid by him to Mr. Herbert, for land purchased from the latter, because he had not *then* satisfied the Court that the charge was erroneous, so neither should the defendant be denied the right to introduce evidence in support of a charge, which the evidence he had then produced did not establish. The Court, with regard to the item of $1,350, had decided against the defendant, "upon the proof then before it." And with regard to the sum of $2,353 33, the decision was against the plaintiff, because "he had not succeeded in satisfying the Court that the charge was erroneous."

Now surely if the complainant, notwithstanding this decision against him at that time, is at liberty to bring forward further proof in support of this charge, and his right to do so cannot be disputed, with what propriety can it be said the defendant shall not be equally favored with reference to the first-named sum, because the decision with regard to it was adverse to him upon the proof then in the record?

With regard to the charge against the complainant, for moneys expended in erecting the furnace, the answer does not propose to open the question anew, the judgment of the Court