

said that, as a general rule, the parties must be limited to the items of surcharge and falsification specified in the pleadings. This is indispensable to prevent surprise, and it must be quite apparent that the defendant, by the pleadings in this cause, had no notice that an attempt would be made to extinguish this charge of \$500, by showing in evidence that a larger cash balance stood on the ledger to the credit of the complainant. The first and second exceptions of the complainant, which are directed against this charge, cannot therefore be sustained, nor can the third exception, which complains of the charge for interest on the principal sum.

The claim for interest could not well be disputed, supposing the principal sum to be due, unless some equitable objection to its allowance could be presented. But the only objection is the existence of the cash balance on the agent's ledger. If, however, the cash account in the ledger could be looked to for the purpose of getting rid of the claim for interest, I can see no good reason why it might not be permitted to extinguish the principle also. It cannot, in my opinion, have any influence one way or the other. It is not involved in the pleadings, and must be disregarded altogether.

The defendant's first exception objects to the allowance to the complainant for the use of the Savage Railroad. In the former, as well as in the last opinion of this Court, the complainant has been treated as the sole proprietor of the railroad. Whatever was advanced or paid on account of that road was considered as advanced to and paid for him, and whatever was to be paid by the defendant for the use of the road was to be credited to him. It is said in this exception of the defendant, that the complainant's bill, and his Exhibit No. 4, recognises and admits that the defendant made certain payments to the stockholders of said Company, which should be deducted from the sum allowed the complainant for the use of the road. But these admissions and recognitions, such as they are, were in the record when the opinion and order of the 22d of November, 1848, was passed. By that opinion and order, the complainant was considered and adjudged to be the Railroad Company, and