

PRACTICE IN CHANCERY.—*Continued.*

- mistake, or where an addition has been made to the draft of the answer after the defendant has perused it, and in some other special cases. *Ib.*
55. This unwillingness of the Courts to permit a defendant to change, or add to the grounds of defence set up in the first answer, is increased when the application is made after the opinion of the Court and the testimony have indicated how it may be modified to accomplish his purposes. *Ib.*
56. An order granting the complainant the right to surcharge and falsify an account, was appealed from, and the Court of Appeals remanded the cause, under the Act of 1832, ch. 302, for the purpose of amending the pleadings and taking further testimony, and for further proceedings, and extended the right to surcharge and falsify to both parties, provided defendant, by amendment of his pleadings, placed himself in such an attitude as to warrant such extension. HELD—
57. That under this decision the defendant could amend his answer, so as to surcharge and falsify in respect to matters known to him at the time of filing his original answer. *Ib.*
58. The power to compel the production of books and papers, clearly belongs to this Court, but should be exercised with caution, and the party invoking it must designate, with a reasonable degree of certainty, the books and papers required, and the facts expected to be proved by them. *Ib.*
59. The application for the production of books stated, "that if they had been kept with any regard to good faith and accuracy, they must contain evidence pertinent to the issues in the cause." No particular books were designated, and no facts expected to be proved by them stated. HELD—
60. That it would be an inconvenient and unjustifiable expansion of the rule upon such an application as this, to order all the books of a corporation to be brought into Court. *Ib.*
61. It is competent to this Court, after an account has been stated by the Auditor, in pursuance of directions, to review and reverse the decision, and to dismiss the bill on more mature consideration. *Ib.*
62. But where an order of this Court has been appealed from, and the Appellate Court has remanded the cause for further proceedings, without reversing or affirming such order, but in the order so remanding the cause has expressed its distinct approbation of the order appealed from, no question adjudicated by that order is open for examination in this Court, except those in regard to which additional evidence has been introduced. *Ib.*
63. 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. *Ib.*
64. If a deed is executed under suspicious circumstances, or is merely constructively fraudulent, this Court may, and should, permit it to stand as a security or indemnity to the grantee. *Ib.*
65. Equity, unlike a Court of law, which must pronounce one way or the other upon the validity of a deed, may adopt a milder course, and suffer it to stand, not as an absolute conveyance, but simply as a security for the sum really due. *Ib.*
66. In this case, a settlement between the complainant and the corporation was made, and the stock of the Company transferred to the latter for the