PRACTICE IN CHANCERY—*Continued.*

17. Where testimony taken under a commission has been returned and filed in court for more than eight months, and been made the foundation of the Auditor's report, to which report exceptions were filed, and which was submitted for final decision, it is too late for one of the defendants, who was examined as a witness, to ask that the commission be remanded upon the ground that the commissioner had made mistakes in writing down his testimony. *Tolson* vs. *Tolson*, 119.
18. Exceptions to such testimony, upon the ground that the parties had no notice that the defendant was to be examined as a witness, and that they, therefore, had no opportunity of cross-examination, will not be sustained, if they had notice of the time and place of the execution of the commission. *Ib.*
19. The omission to procure the previous order of the court for the examination of a defendant as a witness, is a mere irregularity, and when it is apparent no substantial injustice has been inflicted upon the opposite party by denying him the benefit of a cross-examination, and that delay and injury will be visited upon the party relying upon the proof, an objection thereto on this ground ought not to prevail. *Ib.*
20. The order for the examination of a party, as a witness, is granted almost as a matter of course, leaving the objections to be made and considered when the testimony is brought in. *Ib.*
21. A bill of review for new facts or newly discovered facts, must aver that such facts came to the knowledge of the complainant within nine months prior to the filing of his bill. *Hitch* vs. *Fenby*, 190.
22. Between the same parties, and for the same matters, a new original bill cannot be brought after a decree has made in a cause and enrolled, unless it was obtained by fraud. *Ib.*
23. A decree was passed in 1841 for the sale of certain mortgaged property to pay a balance claimed in the bill to be due on the mortgage debt, which sum was admitted by the answer of the defendants *under oath* to be due. Seven years afterwards, the defendants filed their bill to open this decree upon the ground that it was passed in pursuance of an agreement as a mere security for any balance that might be found due on settlement of their mutual dealings, and then charging usury and other objections against complainant's claim. HELD—
    1st. That after such lapse of time, it would require a very strong and clear case to justify the interference of the court to prevent the alleged fraudulent and oppressive use of this decree.
    2d. Not having set up the defence of usury at the time the decree was passed, although he was well aware of the facts upon which the charge is based, and having offered no satisfactory excuse why he did not take the defence then, he cannot be allowed now to open the decree to let in this defence. *Ib.*
24. If a defendant, having the means of defence in his power in an action against him at law, omits to use them and suffers a recovery against him, he is precluded from asking relief in chancery in relation to the same matter. *Ib.*