

been fatal to the admissibility of the proof on appeal, for as I think it is not to be doubted that many circumstances might exist which would make it inequitable to give it that effect. Such circumstances, as I conceive, exist in this case, and, therefore, the exception must be overruled.

To the last report of the Auditor, both sides have excepted upon various grounds. The complainant's first and second exceptions, in my opinion, cannot be sustained. The Auditor has, I think, stated correctly the result of the proof with reference alike to debits and credits.

The complainant's third exception must share the same fate as the first and second. It complains that the Auditor has given weight and credence to the testimony of Ann McPherson, which he was not only authorized but required to do by the opinion of this court of the 14th of June, 1847. That opinion, in that respect, not having been disapproved of by the Court of Appeals in the subsequent judgment pronounced by them, must be regarded as conclusive upon the point unless some evidence clearly discrediting the witness has been since introduced. In my opinion there is none such, at least, none strong enough to warrant the rejection of her deposition entirely, and the exclusion of it in making the average.

The complainant's fourth and last exception has regard to the mode in which the Auditor has charged the interest on the balances due at the expiration of each year. He insists that the account should have been stated with yearly rests. But in this the complainants are again in conflict with the opinion of the 14th of June, 1847, which says, "the defendants are chargeable with interest on the balances due for each year, as stated in former reports of the Auditor," and upon reference to these former reports, it will be found that yearly rests were not made. This exception, therefore, will likewise be overruled.

Having already said the Auditor had arrived at proper results upon the proof, both with regard to debits and credits, the defendant's first and second exceptions must be overruled. Nor can the third exception be maintained, because if, for any reason less would be required for the support of John Tolson from