

But, although the power of the court to grant relief in such a case must now be regarded as undeniable, it seems to be agreed on all hands, that relief will only be granted where there is a plain mistake made out by satisfactory proof. This qualification, says Mr. Justice Story, is very material, since it cannot fail to operate as a weighty caution upon all judges. 1 *Story's Equity*, sec. 157. There seems, indeed, to be but one sentiment among judges upon this subject—the mistake must be made out in the most clear and unequivocal manner, and to the entire satisfaction of the court. *Gillespie vs. Moon*, 2 *Johns. Ch. Rep.*, 585; *Lyman vs. U. S. Insurance Co.*, *ib.* 630. And upon one occasion, Lord Thurlow is reported to have said, the difficulty of the proof was so great that there was no instance of its prevailing against a party insisting that there is no mistake.

Be this, however, as it may, and to this extent Lord Thurlow has certainly been overruled by succeeding chancellors, there can be no question of the impropriety of interfering in such cases, unless the mistake is made out by evidence, clear of all reasonable doubt. In this case, the agreement was by parol, but the settlement in conformity with which the defendant gave his note, is in writing. The bill sets out what the complainant understood to be the actual agreement between the parties, and calls upon the defendant to say whether it is not correctly stated; and whether the error pointed out did not occur in the settlement. The defendant explicitly denies the existence of the imputed errors in the settlement; and insists, that the note given by him was for the correct amount due from him to the complainant, Hall, upon the principle of compromise, which had been agreed upon; and the answer gives a statement of the terms of the agreement which need not be recapitulated, but which differs materially from the averments of the bill in that respect.

The only witness examined is the solicitor of the defendant, who was present at, and participated in, the settlement, acting on the occasion as such solicitor, and his deposition sustains the statement of the agreement given in the answer. Various