

minds to speculate upon, and to weave plausible theories of unfairness in the transaction with which they are associated.

It is true, it is shown in this case, that the defendant cannot read manuscript, and that, therefore, he could not have himself have examined and understood the settlement of January, 1834, which was the basis of the mortgage of the following October; but, then it is in evidence, that that settlement was made in the presence of the defendant, who could both read and write, and who seems, from his proof, to have been quite familiar with his business.

Looking to that settlement, and comparing it with the other papers produced by the defendant, and seeing that to a great extent its fairness is corroborated by those papers; and in view also of the vague and indefinite character of the parol evidence relied upon to show that the defendant was not allowed all the credits to which he is said to have been entitled, I do not consider myself warranted in saying, that fraud was practiced in that settlement. But supposing the circumstances of suspicion were more pregnant, than they present themselves to my mind, there are other facts appearing in the case, which would go far to repel the presumption of fraud.

The settlement does not appear to have been made in private, with no persons present but the parties themselves, but, as is shown by the proof, in the presence of a witness, who could both read and write, and who seems from his own declarations to have been quite familiar with the dealings between the parties. There is, besides, another circumstance, which is well calculated to rebut the presumption that any thing unfair was contemplated by Beale Duvall.

The settlement in which the fraud is said to have been committed, was made on the 8th of January, 1834, and the mortgage only charged to be fraudulent, because founded upon that settlement, was not executed until the 28th October following, upwards of nine months afterwards.

During all this interval the settlement was open to examination by any person whom the defendant might ask to perform that office for him, Duvall having given him a copy of it in his