

it seems to me the plea of limitations is not an answer to the account prayed for by the bill. The bill alleges that the partnership continued until the 1st of January, 1841, and that after the expiration thereof by lapse of time, the defendants who were active partners, proceeded to complete divers jobs of work in said business, contracted for and commenced, during its continuance, for which they received divers large sums of money, of which among other matter he prays for an account. Now it is impossible to say *when* these sums of money (assuming the statement in the bill to be true) were received. They may have been received within the period of three years of the filing of the bill, and if so, may have the effect of taking the whole account out of the statute of limitations. At all events, I certainly am not prepared now to say, that limitations are a bar. Nor do I think the defendants have made good their defence, founded upon a stated account. A man who pleads a stated account, says *Lord Hardwicke in 2 Atk., 399*, must show it was in writing, and likewise the balance in writing, or at least set forth what the balance was. He need not, to be sure, show that it was signed by the parties, as acquiescence in it without objection, for a length of time, will render it a stated account. *Willis vs. Jernegan, 2 Atk., 251*. Nothing of the sort is shown in this case, no account stated, signed by, or acquiesced in, by the parties. A balance sheet is shown, but this cannot be made to perform the office of an account stated between the plaintiff and the defendants. This balance sheet, was to show the general condition of the firm, and not the particular state of the account between the plaintiff and his partners. Nor is it pretended that the promissory note was given for any such balance, because, assuming the balance sheet to show correctly the situation of the affairs of the firm, the plaintiff was a debtor, and not a creditor. If the proof shows any thing in opposition to the title of the complainant to an account, it is not that an account has been stated between the parties, but that there was a compromise, and an assignment of the complainant's interest in the partnership, for a sum certain. Of this, however, I am