

the debts of the railroad, and the land he purchased some years before, were said to comprise the whole claim against him, or nearly so, whilst in that of the 10th of September following, his store account for the expense of his house, and the railroad account, it was said, would perhaps show everything. Now it is surely reasonable to suppose that if these large sums were due from the complainant, and ascertained to be so due from an inspection of the books, then in possession and subject to the examination of C. D. Williams, that they would have been claimed.

17th. In this item the defendant claims to recover from the complainant the sum of \$808, paid to Hugh McEldery, on the 6th of July, 1840, as damages on a contract for lumber to be furnished by him to the defendant, for the erection of an additional cotton mill, upon a contract made with him by the complainant, acting in that behalf for and on account of the defendant, but without any authority for that purpose from the defendant, as the answer alleges. It appears by the deposition of Mr. McEldery, that the contract for this lumber was made in February, 1839, by the complainant with the witness, and that this contract, after the lumber was ready for delivery, was cancelled, at the urgent solicitation of George Williams, the town agent of the defendant, in consideration of the payment to the witness of the sum in question, which was in fact paid on the 6th of July, 1840. The complainant does not appear to have been consulted in regard to this compromise with Mr. McEldery. In fact, before the note was given for the payment of the amount agreed upon, the complainant had fallen into a condition of mental imbecility, and had ceased to be the agent of the defendant, the note being signed by his successor, Mr. C. D. Williams. The Auditor reports that it would seem the complainant was not justified in entering into this contract, and that he is properly chargeable with the sum paid. It is unquestionably a circumstance against the propriety of now charging the complainant with this money, that it does not appear, at the time of its payment, to have occurred to C. D.