

credit (\$16,402 27) of A. Lilly & Co., on leger A, folio 38, are to be transferred to the debit (\$943 03) and credit (\$16,402 27) of Alonzo Lilly, in folio 19 of leger A, and then, after paying the debts of the concern, shall pay over from time to time, as assets may come in, say \$1,402 27 to Alonzo Lilly, and \$867 32 to J. Kroesen, (to each in proportion to their respective amounts,) being for the interest on the capital at first put in. This done, he shall from time to time, as assets may be received, pay to A. Lilly \$7,705 70, or thereabouts, exclusive of \$2,394 31 now at his debit, to place him on an equal footing with Josiah Kroesen, as regards his account of \$5050, (leger A, folio 6,) for expenses, &c., and the residue (if any) to be divided from time to time, say two-thirds to Alonzo Lilly, and one-third to Josiah Kroesen, so that in the end Alonzo Lilly shall have received two-thirds and J. Kroesen one-third of the net profits of the business of Josiah Kroesen & Co., from the 1st day of February, 1836, to the 1st day of January, 1839. All sums paid to either party shall, at the time of payment, be charged to their respective accounts, and no interest to be allowed or paid by or to either party from this date."

The plaintiff's bill impeaches this contract and settlement of the partnership of Kroesen & Company in several particulars, and by an amendment made by agreement, and filed on the 24th of this month, it prays for liberty to surcharge and falsify the several accounts referred to and specified in said agreement, in the several particulars in the bill mentioned. And one of the questions, and the most important one in the controversy, is, whether a case has been made out entitling the plaintiff thus to surcharge and falsify?

The right is not placed upon the ground of fraud, which would entitle the party to open and unravel the whole account, and indeed there is no evidence in the cause upon which the least suspicion of fraud can be raised. If the right exists at all, it must be because of error or mistake, which, leaving the settlement to stand, permits the party to surcharge and falsify; the *onus probandi* being on him to whom the liberty is given;