

—a statement of the amount of the liabilities of the firm, and the condition of the accounts of the partners, were all fairly and openly exhibited before them; and there is no pretence that there was the slightest error or inaccuracy in those elements for forming a correct judgment of the condition of the partnership.

Upon *data* thus full, complete, and truthful, two intelligent merchants meet and adjust their partnership accounts, and ascertain the proportion of the surplus to which each is entitled, and by their written contract, deliberately prepared and signed, they stipulate how and from what source each shall receive the sum ascertained to be due him. It is true that subsequent events may have shown that the estimate of the parties, with reference to the value of a portion of the assets, was too sanguine, but that does not establish error or mistake in the accounts upon which the settlement was based, though it may demonstrate the plaintiff's title to receive something from the defendant for the purpose of producing that equality which the contract of settlement contemplated.

This does not appear to me to be at all like the case of *Williams vs. The Savage Manufacturing Company*, decided by this Court upon a former occasion, and affirmed upon appeal to the Court of Appeals. In that case the plaintiff was shown by the proof to have been of very weak mind at the period of settlement, which though based upon accounts, the accounts themselves were neither examined by the plaintiff (who, indeed, was then incapable of comprehending them) nor by any person acting for him. And in addition to this strong ground of objection to the settlement, errors plain, palpable, and seriously injurious to the plaintiff were specifically pointed out, and clearly established by the evidence.

But, though I think the plaintiff has not made out a case authorizing him to surcharge and falsify the accounts upon which the settlement was made, I am of opinion he is entitled to recover from the defendant something upon the footing of the settlement itself. The defendant, as appears by the settlement and books, had received \$5,050. The plaintiff had