

received, as appears in the same way, \$2,394 31, and in order to place him on an equality with the defendant it was necessary he should receive the further sum of \$7,705 70. The settlement, after providing for the payment of the debts of the partnership, and the interest on the capital contributed by the partners, contains this language: "This done, he" (the defendant who was made the liquidating partner) "shall from time to time, as assets may be received, pay to Alonzo Lilly \$7,705 70, or thereabouts, exclusive of the \$2,394 31, now at his debit, to place him on an equal footing with Josiah Kroesen, as regards his account of \$5,050, leger A, folio 6, for expenses, &c., and the residue of the surplus (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, Lilly shall have received two-thirds, and Josiah 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 state of the accounts between the parties was this: each had received back his capital and the interest upon it, and the debts having been paid, it was supposed the net surplus or profits would be about \$16,000, the apparent surplus being a little upwards of \$20,000. There stood charged to the defendant upon the books \$5,050, and to the plaintiff \$2,394 31, so that in order to put the latter upon an equality with the former, relation being had to the interest of each in the concern, it was necessary that he should receive from collections, as they might be made, the further sum of \$7,705 70, before the defendant received anything more, and such is the stipulation of the contract. It was manifestly the expectation of the parties that the assets would not only be adequate to accomplish this, but that there would be a still further surplus for division, for the contract further provides for the division of such further surplus.

It has turned out, however, that the collections from the as-