

*Clark, 5 Metcalf, 575*, and in other cases to which it is unnecessary to refer. It must, therefore, be regarded as an established principle resulting from the nature of the contract, and necessary for the protection both of the rights of the surviving partners, and the estate of the deceased, that the death of either of the partners produces, *ipso facto*, a dissolution of the concern; unless there is inserted in the contract some provision imposing upon the surviving partners, and the representative of the decedent, an imperative obligation to continue it. There is to be found in this contract of partnership no such stipulation, and we think that the death of Samuel Hayes, on the 20th of May, 1825, is to be treated as the true period of the dissolution.

The counsel for the appellee have, however, contended, that if this partnership was continued from the death of Samuel Hayes, to the 31st of August, 1841, with the express or implied consent of Mrs. Hayes, the order of the Chancellor in this respect was correct, and that the consent of the widow and administratrix, to its continuation is to be inferred from her conduct, and especially from the character of her bill, in which she claims a right to participate in the profits earned by the partners, between the death of her husband and the period of the institution of her suit.

Samuel Hayes died on the 25th of May, 1825. On the 26th of September, of the same year, Mrs. Goodburn obtained letters of administration upon his estate, and on the 15th of January, 1830, she filed her bill, in which she charges, "that the personal property of her husband, had been employed in the business of the partnership, by the defendants," and prays, "that they may be compelled to account for the profits made since his death, out of the personal property, and that she may have a reasonable and just allowance for her dower in the lands." And assuming the facts stated in the bill to be true, it was the unquestionable right of the administratrix, at her election, to demand either the actual profits made by the survivors from the use of her husband's share of the partnership property, or interest upon the capital thus employed.

In *Story on Part.*, sec. 343, it is stated—"That dissolution