

And, therefore, it was the undoubted privilege of the appellant on the case made by her bill, to demand the profits produced by the employment of her husband's share of the property, from his death to the institution of her suit; the assertion of this claim cannot be justly regarded as evidence of an assent, on her part, to the continuation of the partnership, so as to implicate her as a partner, or as a ratification of the acts of the surviving partners.

We cannot perceive anything in the conduct of the appellant evincive of her assent to the continuance of this partnership; and this question is placed beyond controversy by the commanding fact, that in her bill she expressly prays that the defendants may be restrained from using in the business of the concern, her husband's proportion of the personal estate.

There is another objection to the position taken by the counsel for the appellees, that cannot be overcome; and that is, that it is manifest from the answers of the surviving partners, that *they* never consented to receive the administratrix into the firm as a continuing partner. While they acknowledge their liability to account to her for the partnership property as it existed at the death of Samuel Hayes, they reject the idea, that she possessed any authority to interfere in the management of the affairs of the company subsequent to that period. We have already seen that a contract of this description is one of personal confidence, in which the ability, skill, and character of each partner is supposed to enter into the consideration of his associates in the formation of the connection, and that, therefore, there can be no legal continuance of a partnership dissolved by death, in the absence of a new assent on the part of the survivors. You cannot impose upon the surviving partner, the obligation to introduce into the partnership the representative of his former associate. *Thornton vs. Dixon*, 3 Bro. Ch. R., 200; *Marquand vs. New York Manufacturing Company*, 17 Johns., 535; *Pearce vs. Chamberlain*, 2 Ves. Sr., 33.

We think, therefore, that the death of Samuel Hayes, on the 20th of May, 1825, is to be treated as the period of the dissolution of this partnership, and that the accounts are to be taken