according to the stipulations of their contract of co-partnership, the term of its duration has not yet expired.

It seems to be admitted, where a specified period of time is limited for the continuance of a partnership, that neither party can, at his option alone, dissolve the connexion. But, although
425 such *a partnership cannot be terminated at the pleasure of either party; yet, where, as in this instance, there is no express stipulation to the contrary, the partnership is virtually dissolved by the death of either of the parties. And it is said, that in England the bankruptcy of one partner operates, like death, as a virtual dissolution of the firm. In point of principle, and so far as relates to the matter now under consideration, there can be no difference between a bankruptcy, according to the English law, and an actual insolvency in fact, according to our law. So long as a man carries on his business and has a prospect of gain, he is not considered as insolvent; but, if, in addition to such deficiency of property, his business so far declines as to leave him no prospect of paying his debts, he is then, according to the universal sense of mankind, insolvent. Whether he is declared to be in this condition according to the technical process of the English bankrupt law, or is admitted to be so in fact, the effect upon the contract of co-partnership must be the same. The insolvency is the total destruction of the pecuniary capacity of the partner to fulfil his contract of co-partnership. But his pecuniary capacity was the basis on which it rested. The contract itself, therefore, must be considered as effectually annulled, as if the party were dead. If both of them be insolvent, or dead, there is no efficient or living capacity left to execute the contract; if one only be dead or insolvent, the terms of it cannot be complied with; and where personal confidence was the principal inducement for making the agreement; as in contracts of this nature, it would be unreasonable; and, therefore, the other party shall not have the executor, administrator, trustee or assignee of the deceased, or of the insolvent, intruded upon him. Consequently, the partnership between these parties must be considered as having been virtually and effectually terminated by their insolvency. It can be extended over no new transactions, nor be allowed to expand itself any more. It must be wound up and brought to a close; and, except for such purposes, must be deemed to have totally ceased to exist. *Ex parte Williams*, 11 *Ves.* 5; *Harding* v. *Glover*, 18 *Ves.* 281; *Vulliamy* v. *Noble*, 3 *Meriv.* 614; *Crawshay* v. *Maule*, 1 *Swan.* 506.

While a man continues solvent, the order in which he pays his creditors is a matter of indifference, since none can suffer; and therefore, no one creditor has a right to complain of the preference given to another. But so soon as he becomes insolvent, that
426 *privileges ceases; and equity requires, that he should make an equal distribution of his effects among them all. The