

THE CHANCELLOR:

The Chancellor is not prepared to say, that in the condition in which this case now stands, the act of limitations is a bar to the relief prayed by the bill.

The parties, it appears, entered into a copartnership by an agreement under seal, dated the 1st of January, 1838, to continue for the space of three years from that date. On the part of the defendants, it is insisted, that the partnership terminated in March, 1839, by mutual agreement. That there was a statement and settlement of accounts at, or about that time, and that for the sum agreed to be paid to the complainant, for his interest in, and as the consideration of his retiring from the concern, the defendants gave him their promissory note, dated the 4th of May, 1839, at ninety days, which they paid at maturity, and which they have produced, and proved under the commission.

The plaintiff, on the other hand, insists, that no such account was stated, and settlement made, but that the partnership endured for the full period stipulated in the agreement, and assuming, for the sake of argument, that the question of limitations is not affected by the fact, that the articles of copartnership are under seal, (a point which I do not mean to decide,) the validity of the defence, appears to me, to depend upon the sufficiency of the evidence of the dissolution and settlement as alleged by the defendants. The answer in this respect is not responsive to the bill, and of course, it is incumbent on the defendants to prove the facts. I incline to the opinion, that though the partnership was formed by an agreement under seal, that still, in a court of equity, a dissolution actually made by the parties, though not under seal, before the period limited, would be held effectual as between themselves, and as to third persons having notice thereof. Such is evidently the opinion of Mr. Justice Story. *Story on Part., section 268.*

But, though this may be the case, it is essentially necessary that the will of the parties, in reference to the dissolution, should be clearly expressed. This is required in respect to all partnerships, whether for a limited period or at will. *Ibid., sec. 268.* Such being the law, the defendants are under an obligation to