

Whatever may be the course of the court in regard to such appointment in the case of living partners, when either has a right, at his pleasure, to dissolve the connection, or where the partnership is terminated by the mere efflux of time, there cannot, I think, be found any case in which a receiver has been put in upon the application of the representatives of a deceased partner against the survivor, unless he has been guilty of mismanagement and improper conduct. *Gow on Part.*, 382; *Philips vs. Atkinson*, 2 *Bro. Ch. Rep.*, 272. It is true, if both partners are dead, and the representatives of one institute a suit against the other, the court will, as a matter of course, appoint a receiver, and the reason given for this distinction between the case of the representatives of a deceased partner suing the survivor, and the case of the representatives of one deceased partner suing the representatives of the other, when both are dead, is, that notwithstanding the death of one, confidence in the other partner remains, whereas, when both are dead, there is no confidence between their respective representatives. This is the reason given by Lord Thurlow, in 2 *Brown, Ch. Rep.*, 272, and by *Gow*, 282, 283, and *Collyer*, 197.

It was said by Chancellor Walworth, in the case of *Law vs. Ford*, 2 *Paige*, 310, that where either partner has a right to dissolve the partnership, and the agreement between the parties made no provision for closing up the concern, it was, of course, to appoint a manager or receiver on a bill filed for that purpose, if they could not arrange the matter between themselves, and this appears to be reasonable, because, as a general rule, each partner has an equal right to the possession of the partnership effects, and to collect and apply them in satisfaction of the debts of the firm. But that was the case of a dissolution, *inter vivos*, where the equal rights of the partners (they being unable to agree as between themselves) would seem to render the interposition of the court in this form indispensable. But the case of a proceeding by the representatives of a deceased against a surviving partner, is wholly different; the latter, by law, has a right to the custody, care, and management of the joint estate. He is the person in whom the deceased reposed confidence, and