

The present bill was filed on the 1st of May, 1848, and seeks, upon allegations of misconduct and abuse against the defendant, to show that a confidence confirmed and reposed by a connection of eighteen years duration, was misplaced and that the party in whom it was confided is unworthy to be entrusted with the performance of those duties which the law devolves upon him. I have remarked that all the acts charged against the defendant, in the bill, and which are alleged to be in violation of his duty as the surviving partner, are denied, except two, in regard to which an explanation is offered. But it is by no means certain that the answer admits more than one act which did not fall strictly within the limits of his duty. It was unquestionably the right and the duty of the defendant, as surviving partner, to collect the assets of the firm, and apply them in discharge of its obligations, and it is certainly very far from being apparent, that in that part of his answer in which he speaks of the amount of the debts of the firm, which he has paid in the interval between the death of the senior partner to the time of filing the bill in this case, he means to be understood as saying he has done more than this.

It is true, he says, the amount thus paid very much exceeded the sums received from collections and sales, and that he was compelled to resort to the aid of loans, and to his private resources, but it by no means follows that these loans were effected upon the partnership responsibility, or that any new obligation or contract binding upon the partnership was created. It does not appear, in fact, that any new obligations were issued in the name of the partnership growing out of the transactions of which I am now speaking, and even if such was the case, as the dissolution by death puts an end to a partnership from the time of the occurrence of that event, whether known or unknown, or whether third persons have or have not notice thereof, such new obligations bearing the partnership signature, would not be binding upon the firm, but only upon the surviving partner who signed them. But conceding the firm would be bound, still, as according to the answer, the money raised in this way was applied in extinguishment of claims against