

the firm created prior to the dissolution, it might be very fairly insisted that it is not the creation of a new obligation at all, the person to whom the new obligation is given being substituted for, and simply standing in the shoes of the old creditor whose debt is discharged.

The allegation of the bill is, that defendant has been using the name of the firm for his own use and benefit, and has sold large amounts of the property of said concern without accounting therefor. These allegations are by the answer emphatically denied.

There is, however, one allegation of the bill, in which the surviving partner is charged with acts not warranted by his duty, which is, to a certain extent, admitted by the answer, though an explanation of it is offered, which, in my judgment, disarms the charge of much of its point. The bill alleges that notwithstanding the firm was dissolved by the death of Samuel, the surviving partner has gone on and made purchases of lumber, for which he has given the notes of the firm, and mixed said lumber with the lumber of the firm. The answer, whilst it denies the mingling of the newly purchased lumber with the stock of the firm, and whilst it states that the lumber so bought was kept separate from, and sold, and entered in the books, so as to distinguish the proceeds of its sales from the proceeds of sales of the old stock, does, nevertheless, admit the fact that such purchases to a small amount were made, and the notes of the firm given for them. The amount of lumber so purchased was less than four hundred dollars, and as the answer states, was required to keep up an assortment, and aid in the sales of the stock on hand at the time of the dissolution of the partnership, and the answer also states that the parties to whom the notes were given, knew of the death of Samuel House, (though this, as we have seen, is immaterial,) and that the surviving partner was alone responsible.

I cannot bring myself to think that an act like this, designed and perhaps well calculated to aid in winding up the affairs of the firm advantageously, and which the defendant says, in his answer, shall not be repeated, can subject him to the charge of