

It is true, that this partnership is dissolved by the death of one of the partners and that nothing remains but to wind up its affairs, and, therefore, no weight is to be attached to the argument that the appointment of a receiver will break up the business. The business, except for the purpose of settling up the affairs of the firm is broken up by the death of the senior partner, and I am not restrained from appointing a receiver because such appointment will bring the affairs of the firm to a close.

The objection to the motion is, that here is a party who by law is entitled to retain possession of the partnership effects and wind up its business. *Egberts vs. Wood*, 3 *Paige*, 517; *Collyer*, 63, note 1. A party between whom and the deceased there existed a confidence, the benefit of which devolves upon the survivor upon the death of his associate. *Philips vs. Atkinson*, 2 *Brown's Ch. Rep.*, 272; *Daniel's Ch. Pr.*, 1969. The court, in my opinion, has no right to take from the surviving partner the power resulting from that position, unless a case is made out showing that the interests of other parties are in danger from the continued exertion of the power. Show that the survivor has been guilty of a breach of duty, or of the contract and partnership, that he is wasting the funds of the firm, and the court will be prompt to interfere for the protection of the estate of the deceased partner by the appointment of a receiver. *Higginson vs. Air*, 1 *Desaussure*, 429.

In this case the amended bill, in order to show that the interest of the representatives of the deceased partner were in peril, alleges, though not in very specific terms, the insolvency of the defendant. This allegation, however, is swept away by the explicit denial of the answer, and there is not only no proof, but no attempt has been made to prove the truth of the allegation. The case is consequently to be regarded as if no such averment had been made, and it remains to be considered whether any other facts are alleged and proved, upon which this court can with propriety take the settlement of the affairs of this partnership from the hands of the surviving partner.

The attempt to create distrust in his integrity by the allega-