

viving partner, but as the latter upon settling the affairs of the partnership would be entitled to be reimbursed for his advances to pay its debts, the actual condition of the concern was correctly stated. The answer, as it seems to me, explains this matter satisfactorily, and all its statements in this respect are fully sustained by O'Donnell the clerk.

Upon a careful examination of the various exhibits filed with the answer which were prepared, as it appears, to meet the several and special interrogatories of the bill, it will be found, I think, that they support the statements of the answer with regard to the condition of the firm. It would be tedious to go through them in detail, and I content myself, therefore, by saying, that I can find nothing in them calculated to make an impression unfavorable to the integrity of the defendant, or upon which I can say the confidence reposed in him by the deceased partner was misplaced.

A good deal has been said about the manner in which the books were kept, and the neglect to subject them to the test of periodical settlements and balances. Upon this part of the case, however, it must be recollected that the deceased partner could not have been ignorant of this omission. The partnership had existed for many years, and during the whole period, except the last year of his life, the deceased is conceded to have been an active, energetic and intelligent man of business. It is impossible to suppose that he did not know how the books were kept, and now after his death to urge a defect in this particular, with which he must have been familiar, and to which he must be presumed to have given his assent, as a reason for withdrawing confidence from the surviving partner does appear to me to be rather a rigorous measure of justice.

Seeing then that the charge of insolvency as made in the amended bill is entirely overthrown by the answer, and that no attempt has been made to establish it by proof, and being by no means satisfied that any improper conduct has been fastened upon the defendant, or that he has shown himself unfit to be entrusted with winding up the affairs of this firm, a duty and a right which the law confers upon him, the prohibitory process