

unless, therefore, the court is satisfied that he cannot be safely entrusted with the joint estate, the right thus conferred upon him by law, and confirmed by the confidence of his deceased partner, should not be wrested from him.

Chancellor Kent says, on the dissolution by death, the surviving partner settles the affairs of the concern, and the Court of Chancery will not take the business from him and appoint a receiver, unless confidence be destroyed by his mismanagement or improper conduct. 3 *Kent's Com.*, 63, and see *Evans vs. Evans*, 9 *Paige*, 178. The surviving partner alone can sue or is suable at law upon claims due to and by the firm, the executor of the deceased having a right to insist upon the application of the joint property to the payment of the joint debts, and a division of the surplus. *Ex parte Ruffin*, 6 *Ves.*, 126. And if within a reasonable time the survivors do not account with him and come to a settlement, a court of equity will interfere in an effectual way to prevent injury to the representatives of the deceased.

But still there are rights and duties which devolve upon a surviving partner upon the death of his associate, and he is to be allowed a reasonable time for their performance, during which this court will not interfere and transfer them to other hands, unless by acts of mismanagement or misconduct, the confidence otherwise due him shall be destroyed. *Gow*, 378; *Story on Part.*, sec. 344; *Hart vs. Schrader*, 8 *Ves.*, 317.

The counsel for the complainants has pressed upon the court the distinction between the case of a subsisting partnership, and one which has terminated, whether by the act of the parties, effluxion of time, or death, or bankruptcy. And there can be no doubt that the court will interfere by the appointment of a receiver, with much less reluctance in the case of a partnership which has closed, than during its continuance. The reason for this difference is pointed out in the cases referred to by Judge Story in section 231, in his treatise on the Law of Partnership, and the note to the section. The reason, in truth, is an obvious one. In the case of a subsisting partnership, the court will never interpose in this way unless for such gross