

The answer states first, that the debts due the firm, which could not be collected without legal proceedings, were placed promptly in the hands of attorneys for collection. It is true some of these claims, according to the receipts of the attorneys are not upon their face payable to the late firm; but I think credit should so far be given to the answer as to assume, that they are the property of the firm. It is certainly not necessary that it should appear upon their face, that they are the property of the firm. In the various mutations and transfers of monied securities, there is no difficulty in understanding how the firm may have become the owner of these claims. That the suit is brought in the name of Roberts alone, is explained and justified by the nature of the contract between him and complainant.

The charge of waste and misapplication is also denied, and exhibit No. 1, filed with the answer, shows that a large proportion of the debts have been paid. It is to be recollected that this exhibit is sworn to, and I do not think, that the copies of the receipts which have been filed, though some of them are not free from ambiguity, should be allowed to destroy the effect of the explicit statement of the answer and this exhibit.

These exhibits may be subject to criticism on the one side, and of explanation upon the other, when the accounts come to be taken, if the cause should take that direction, but at this stage of it, standing upon bill and answer, I do not think there is sufficient evidence upon the face of the exhibits in opposition to the answer, to take from it the effect of rebutting the charge of misapplication.

It was said by my predecessor to be a well established rule, that on a motion to dissolve, the defendant can only rely upon so much of the answer as is responsive to the bill, and that matters in avoidance cannot be allowed to have any effect. 3 *Bland*, 445. But this is matter responsive to the bill which charges misapplication. The answer denies this misapplication, and exhibits vouchers in its support; and because these are ambiguous, it is contended the denials of the answer are to be disregarded. I think otherwise, and that the answer must have its due weight. The charge of insolvency, or apprehended