fund.. If a creditor is pursuing two remedies when only one is open to him, chancery may, upon application, compel him *to elect*, but until this is done, his pursuit of both will not deprive him of either. Here these parties have certainly not been called upon to elect, and the circumstances (even if the proof existed) that they are proceeding by way of attachment would not deprive them of the right to come in under this bill of interpleader and ask for their share of the fund.

[An order was then passed directing the division of the fund, *pro rata*, amongst the creditors specified in the letter of Finley of the 31st of March, 1850.]

JOHN NELSON, for Rieman & Sons.
WALLIS, THOMAS and NORRIS, for other Creditors.

WILLIAM J. HYDE
vs.
JOHN AND HAMILTON EASTER } SEPTEMBER TERM, 1847.

[PARTNERSHIP—PARTNERS.]

THE rule that the carrying the stock of an old firm into the business of a new one, entitles a partner of the old firm to treat the new trade as a continuation of the old business, and to claim such proportion of the profits as he might have claimed if the old trade had been continued, is not a universal one.

The right to share in the profits resulting from a continuation of the business after dissolution, is founded upon the exposure of the property of the partner who goes out to the risk of the new business, and if such partner has no property to be thus exposed, the principle cannot apply.

This rule is not applicable to the present case, where the *whole capital* was furnished by the continuing partners, and the out-going partner had at the time of dissolution drawn more than his share of the profits, and the written articles of co-partnership provided for its termination in various contingencies in precise terms, and the partnership was in fact dissolved in exact conformity with the articles.

[The facts of this case are fully stated in the opinion of the Chancellor.]