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NOTES

FIRM NOTES WITH INDIVIDUAL SIGNATURES OF PARTNERS.

The Court of Appeals of Kentucky has always prided itself on the fact that in the interpretation of any document, be it a statute, a will, a deed, a contract, it has always given effect to the intention expressed, or implied in the language, in preference to technical rules; but in one instance, at least, it has deviated from this correct principle in an unequivocal manner, namely: In failing to give the intended effect to a partner's signature under the signature of his firm on a promissory note. The court held that in as much as the signature of the firm already obligates all the members of the firm, the signature of the partner under that of his firm cannot be given any value, but must be treated as surplusage. In case of the insolvency of the firm the payee of the note takes only a dividend from the partnership estate and cannot get a dividend from the insolvent estate of the partner.¹ That this is contrary to the intention of the parties to the note is apparent. The creditor would not sell the goods, or give to the debtor firm further time for payment upon the obligation of the firm alone; he also required the separate obligation of the partner before parting with his goods, before granting time; he insisted on a double undertaking: that of the firm and that of the individual partner, so that he could levy his execution both on firm property and the individual property of the signing partners; so that in case of insolvency of firm and partner he might prove his claims against both insolvent estates. Yet the courts would deprive the creditor of the fruit of his greater caution by allowing him a dividend only out of the firm estate, though the contract for the double dividend was lawful and not against public policy.

How unjust this principle is will appear clearly if we read carefully the decision of Judge Sprague of the United States District Court in 1843, supporting a double dividend, on which and in the learned opinion accompanying the same in Re: Fayette National Bank v. Kenney's Assignee, 79 Ky. 133.

¹ Fayette National Bank v. Kenney's Assignee, 79 Ky. 133.
num\(^2\), the Federal rule is based which has prevailed under the bankruptcy laws of 1840, 1867 and 1898, though the letter of these statutes might have left the door open for adopting the rule which our Court of Appeals has adopted. In that opinion the learned judge shows that though the English rule does not permit two dividends it is, as counsel as well as the judges in all the cases admit, based not on reason nor on equity but only on ancient usage which the conservative English jurists were unwilling to break through because it was more convenient to follow it. That the rule was also contrary to the common law which in case of a firm and individual signatures permitted the creditor to levy both on firm and individual property until satisfied in full. He therefore did not feel bound to follow the English rule contrary to law and equity as no American precedents nor a statute compelled him to do so.

The Court of Appeals gives as reason for not permitting two proofs and dividends that to do so would be contrary to the rule established in Kentucky by the decision in *Northern Bank of Kentucky v. Keiser*. That rule, however, is only to the effect that if the firm creditors have exhausted the firm estate they can not come against the individual estate until after the individual creditors have received out of the individual estate an equal dividend with the firm creditors. I can not see the conflict between the Keiser rule and the rule of two proofs and dividends but think that the two rules may be easily reconciled. After the firm creditors have exhausted the firm estate they must wait until the individual creditors including the creditor who has the firm and individual signatures to his note, have received a dividend equal to that received by the firm creditors. Where is then the conflict?

As long as the bankruptcy act of 1898 is in force this question may be considered as academic only; but cases may arise when an insolvent estate is allowed to be wound up in the state court. Will the latter be bound to adhere to a rule which is neither just nor equitable and which, as pointed out at the beginning, runs counter to the intention of both parties?

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\(^2\) Fed. Cases 4674.
\(^2\) 2 Duval, 169.