IN RE DELL.

Case No. 3,774.
{5 Sawy. 344.}[2]

District Court, D. California. Dec. 24, 1878.

BANKRUPTCY—PROOF AGAINST SEPARATE ESTATE OF PARTNERS.

Where, out of a firm of four partners two were insolvent and one was bankrupt, and the

fourth partner paid off and discharged out of his separate estate all the firm debts: *Held,* that he was entitled to prove against the separate estate of the bankrupt one half of the amount so paid by him.

James O. Perkins, for assignee.

R. Thompson, for Baldwin.

HOFFMAN, District Judge. It appears from the testimony taken by the register that the bankrupt was a member of a firm consisting of four partners; of these, two are insolvent, and one is a bankrupt Baldwin, the remaining partner, has paid off and discharged all the firm debts out of his separate estate, and he now asks to be allowed to prove against the estate of the bankrupt, concurrently with his separate creditors, for one half of the firm debts paid by him. The partnership has been dissolved and its affairs wound up and completely settled. I have not been referred to any case under the late or earlier bankrupt laws of the United States where the question thus raised has been decided.

It seems to be well settled in England that a partner who has paid all the firm debts may prove against the estate of his bankrupt associate for the share which the latter ought to have paid; what that share is seems to be open to question. Mr. Parsons inclines to the opinion that the bankrupt estate is only liable for the share or proportion which would be due from the partner if all the members of the firm were solvent; he admits, however, that Lord Eldon was of a contrary opinion, and held that the equity of the solvent party who had discharged all the firm debts, to treat the bankrupt partner as a co-surety continued after the bankruptcy. Pars. Partn. 476.

Mr. Robson, in his very valuable work on the Laws of Bankruptcy, observes: "If one, either before or after the bankruptcy, pays all the joint debts, he will be entitled to prove as a surety against the separate estate of his copartners for the share which the latter ought to have paid;" and for this he cites numerous cases. Robs. Bankr. 527. And on page 528 he says: "If one partner pays all the joint creditors he is entitled to contribution from the others according to their respective shares; but if any one of them is unable to pay his share of the debts the others must bear his proportion equally amongst them; and, therefore, a partner paying the joint debts will be entitled to prove against the separate estate of a copartner, not merely in respect to his share thereof, but also for a proportion of the share thereof of which any other partner ought to but is unable to pay." In a note, after citing several cases, he observes that Ex parte Watson, in which Sir J. Leach held a contrary doctrine (Buck, 449), may be considered overruled.

I have examined all the cases referred to by Mr. Robson. They are not as explicit and decisive as could be wished, but they seem fairly to justify the doctrine enunciated in the text. See Ex parte Moore, 2 Gly. & J. 190; Ex parte Hunter, Buck, 552; and Ex parte Plowden, 3 More. & A. 402. See, also, Colly. Partn. § 986; Story, Partn. § 407.

I think, therefore, that the proof offered should be admitted.

[2] [Reported by L. S. B. Sawyer, Esq., and here reprinted by permission.]