

IN RE DUNHAM.

Case No. 4,144.
[1 Hask. 495.]¹

District Court, D. Maine.

Dec., 1873.

PARTNERSHIP—FIRM CREDITORS—BANKRUPTCY.

A firm creditor cannot share in the assets of a bankrupt partner until his creditors are paid if the other partners are solvent, even if there be no firm assets.

In bankruptcy. Proof of debt against the estate of a bankrupt co-partner by a firm creditor.

FOX, District Judge. The question here presented is, whether a co-partnership creditor can share in the assets of one member of the firm who has been adjudged bankrupt, the other member being solvent, and there being no firm assets.

In such a case it seems to be well established by the English courts, that the firm creditor is not entitled to receive a dividend from the individual estate. There being a solvent partner to whom he can look for the payment of his demand debars him of the right to a claim on the individual estate. *In re Corf*, 3 Mad. 229; *T. Pars. Partn.* 348; *Ex parte Kensington*, 14 Ves. 447.

Under the bankrupt law of 1841 [5 Stat. 440], this rule was recognized by Judge Ware in *Re Marwick* [Case No. 9,181], and it has since been sanctioned by Drummond, J., in *Re Knight* [Id. 7,880]. See, also, *Bump, Bankr.* 213, 572; *In re Downing* [Case No. 4,044].

In the opinion of the court, the proof of the firm debt must be postponed until the separate creditors are paid.

¹ [Reported by Thomas Hawes Haskell, Esq., and here reprinted by permission.]