

Case No. 4,399.  
[5 Ben. 421.]<sup>1</sup>

IN RE ELLIS ET AL.

District Court, S. D. New York.

Dec., 1871.

DIVIDEND—INDIVIDUAL ESTATE.

Where it appeared that E., one of the bankrupts, was a member of the firm of E., B. & E., on whose petition the bankrupts, who composed the firm of E. & J., had been adjudged bankrupts, and a dividend had been declared in the bankruptcy proceedings, no individual debts having been proved against E., although such existed: *Held*, that the share of the dividend which E. would be entitled to, as a member of the firm of petitioning creditors, should be retained by the assignee, to await the action of the individual creditors of E.

In this case the firm of Ellis & Jaquays was adjudged bankrupt, on the petition of the firm of Ellis, Britton & Eaton. Joel A. H. Ellis was a member of both firms. An assignee having been appointed, a dividend of twenty-five per cent was declared, under which the firm of Ellis, Britton & Eaton would receive \$2,945 45, of which the share of Joel A. H. Ellis would be \$474 44. There were individual creditors of Ellis, but no such claims had been proved. The register, on the request of the assignee, certified the facts to the court, with the two following questions: 1. Is the whole of the dividend property payable by the assignee to the firm of Ellis, Britton & Eaton? 2. If not, may not the proportion of the dividend, to which Ellis would be entitled, be retained in the hands of the assignee, to await the action of his individual creditors, and the rest of it be paid to the other members of the firm?

BLATCHFORD, District Judge. The first question is answered in the negative, and the second question in the affirmative.

<sup>1</sup> [Reported by Robert D. Benedict, Esq., and here reprinted by permission.]