IN RE FROST ET AL.

Case No. 5,135.

{3 N. B. R. 736 (Quarto, 180).}[1]

District Court, E. D. Michigan. May 12, 1870.

BANKRUPTCY—PROVABLE DEBTS.

Whether a married woman may prove against the estate of a bankrupt firm, of which her husband was a member, the amount of a promissory note given by the firm to him for his contribution to capital stock—the money having been furnished by her, and the note transferred to her soon after its execution: *Held,* the note was not an evidence of debt against the firm, but against her husband only. She may prove as against her husband and participate in the dividends of his individual estate, but not against the partnership estate.

Before Hovey K. Clarke, Register in Bankruptcy.

I, the said register, do hereby certify that in the course of proceedings before me, the following question arose pertinent to the said proceedings, and was stated and agreed to by counsel for the opposing parties, to wit: Mr. Lothrop, who appeared for Mrs. Sarah A. Frost, a creditor, who has heretofore filed proof of her claim against said estate, and Mr. Dickinson, who appears for creditors who object to the allowance of said claim, and on whose petition an order has been made for the examination, to wit: Upon the facts shown by the proofs in this case, is the note presented by Mrs. Frost valid against the partnership in her hands, and entitled to be proven and allowed as a claim against the partnership assets? And the parties requested that the same should be certified to the judge for his opinion thereon.

Facts: On the 1st of March. 1864, the bankrupts entered into partnership under written articles of that date, which partnership by its terms was to continue to the 1st of March, 1869. The articles also provided, that "the capital stock of said concern is to be thirteen thousand dollars, and is to be contributed as follows, to wit: R. H. Frost is to put in ten thousand five hundred dollars, and Lewis Westfall is to put in two thousand five hundred dollars, and the firm is to issue notes to the parties for said capital, and pay annual interest on the same, at the rate of seven per cent per annum; said capital stock is to be left in the concern until the expiration of the copartnership." The profits of the business were to be equally divided. A note was delivered to each partner in accordance with the articles—one to Frost for ten thousand five hundred dollars, and one to Westfall for two thousand five hundred dollars. The note given to Frost is the claim which Mrs. Frost seeks to prove against the estate of the bankrupts. The following is a copy of it: "$10,500. Jackson, March 1, 1864. One day after date we promise to pay to the order of R. H. Frost ten thousand five hundred dollars, with interest

seven per cent, payable annually, value recevived. (signed) Frost & Wsetfall. (Stamped.)" Copy indorement: "Pay Sarah A. Frost or order. (Signed) R. H. frost."The testimony taken on the re-examination of the claim of Mrs. Frost, shows that for several years before the formation of the firm of Frost & Westfall, Mr. Frost, her husband, had been a member of the Frost & Crittenden, the capital stock of which was composed in part of a sum or sums of money which Mrs. Frost had furnished her husband to put into the business. At the dissolution of the firm of Frost & Crittenden, Mrs. frost held the note of that firm for money advanced by her and put into the business, for about the sum of six thousand dollars, which was taken to be the value of the property of Frost & Crittenden, which was transferred to the new firm of Frost & Westfall; that Mrs. Frost, about a month before this time, put into the hands of her husband to put into the business of the new firm, the further sum of four thousands dollers, which, with the six thousands dollars already mentioned, and perhaps some other items not specified, constituted the sum of ten thousand five hundred dollars, which Frost, by his articles of partnership with westfall was to contribute to the capital stock of the firm of Frost & Westfall, and for which the note presented in this case was given. The Precise time when the note was delivered by Mr. Frost to his wife is not stated. Mrs. Frost says, it was "at the time or very soon after it was made." Mr. Frost says that he did not have the note "untill the firm had been formed," and he thinks it "was written a few days after it was dated." The date was March 1, 1864—the date of the articles of copartnership.

Opinion of the Register.

It is contended on behalf of Mrs. Frost that the note appended to her deposition is evidence of an indebtedness which existed on the day of its date from the firm of Frost & Westfall to Richard H. Frost, one of its members, from whom she received it for an actual consideration paid to him equal to the full amount of the note, and it is claimed that a debt due by a firm to one of its members, when evidenced by a note and that note in the hands of a third person bona fide, may be proved against the firm in all respects like any other obligation of the firm.

The first inquiry is, was this in fact an indebtedness on the date of the note by the firm of Frost & Westfall to R. H. Frost? The articles of copartnership show that Frost & Westfall had agreed with each other to become partners, that Frost should pay into the common stock of the firm ten thousand five hundred dollars, and Westfall should pay two thousand five hundred dollars, and that these sums, when paid, should be "left in the concern until the expiration of the copartnership," which was to be five years thereafter. By this agreement Frost & Westfall were each the debtors of the firm until the sum to be contributed by each was paid. The payment of the sum, therefore, did not create a debt from Frost & Westfall to Frost; it simply discharged an obligation from Frost to Frost & Westfall, and the note which was given was simply the evidence of that fact, given in

the form which the articles required. The note, construed with reference to these articles, had no other legal effect than a receipt or certificate that the payee, R. H. Frost, held of the capital stock of the firm of Frost & Westfall twenty-one twenty-sixths of the whole. Westfall held a similar note representing five twenty-sixths of the stock. These notes were made payable one day after date. They were dated on the 1st of March, 1864, though written within, as Mr. Frost thinks, "a few days after." It cannot be possible that either of the partners supposed that these notes could properly be passed into the hands of a third party, and thus at any time enforced against the firm as negotiable promissory notes. To suppose this is to suppose that after having mutually agreed that the capital stock contributed by each should be "left in the concern until the expiration pf the partnership," they should give each other notes by which either partner could, through the intervention of a third party, compel the surrender of the capital contributed by him at any time after four days, when the one day notes would mature, from the commencement of the five years of its proposed duration. If Mr. Frost delivered his note to his wife in order to enable her at her option to exercise any such power as this, it was in fraud of the rights of his partner, as well as against the creditors of the firm. If, however, he delivered the note to her as an evidence of his debt to her for money borrowed to "put into the business," as Mrs. Frost testifies it was, the delivery would probably operate as an equitable assignment of his interest in the firm to the extent that would be due upon it at the expiration of the copartnership. This would be a proper and legitimate use of it, but it would be no evidence of a debt against Frost & Westfall, and the attempt to employ it as such in this case is clearly against the rights of Westfall, and especially of the creditors of the firm.

There is, however, another inquiry necessary to a full consideration of the case—the claim being in the form of a negotiable promissory note, whether Mrs. Frost can claim the rights of a holder acquiring the note before maturity, and without notice of the equities affecting it. The proof is not clear whether she actually received it before or after maturity. It had but four days to run, and it would seem probable from Mr. Frost's testimony, that it was past due before it was made and signed. The probability is therefore against her having received it before maturity. She testifies, however, to some knowledge as to the true character of the

transaction out of which the note grew. She had lent money before to her husband to put into the business of Frost & Crittenden, and she lends this for the same purpose. Just what this meant or what was the effect of lending this money to her husband for this purpose, as related to her husband's partner and the creditors of the firm, she may not have known herself. The whole affair was managed by her husband, to arrange when, and as he saw fit; and it becomes a very serious question, whether a married woman may employ her husband to manage her individual estate, and not charge herself with notice of all facts known to him, which may affect his transactions on her behalf. The power of a married woman to deal directly with her own personal property in the manner shown by this case, is of recent origin; and the books afford but little light upon the extent to which her husband may, by his acts, affect her rights when dealing with her property. But when the confidential relation of husband and wife is considered, and especially the extent to which wives confide to their husbands the management of their estates, it is easy to see that the grossest abuses may arise if a wife be allowed to assert her right against her husband's creditors, on the ground of ignorance of facts which were well-known to him. I strongly incline to the opinion, that in all such cases the knowledge of the husband of the facts affecting the wife's property, which he is managing by her consent, must be regarded as the knowledge of the wife. In this case, Mrs. Frost knew what her husband was going to do with her money. She knew he was going to put it into his business with Westfall. He put it in as capital contributed by him. So Westfall understood it She, I think, must be charged with the knowledge of the disposition her husband made of it, and though she may not know the difference between lending money to a firm and contributing a partner's share to the capital stock of the firm, the law will determine her rights according to the facts, as they are shown to exist; and thus having knowledge, or being legally charged with the consequences of the knowledge, that the note she took was not evidence of a debt due from the firm of Frost & Westfall, she cannot be allowed to prove it against the partnership estate. As a debt against B. H. Frost, and entitled to participate in any dividend of the proceeds of his individual estate, I see no objection to its being allowed.

LONGYEAR, District Judge. I fully concur in and approve of the foregoing views and conclusions of the register.

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