IN RE IRVING ET AL.

Case No. 7,074.
{17 N. B. R. 22.}[1]

District Court, S. D. New York. Sept. 4, 1877.

BANKRUPTCY—PROOF OF DEBT—ACCOMMODATION NOTE—ENDORSEMENT BY ONE MEMBER OF PARTNERSHIP.

Where one member of a firm indorses an accommodation note in the firm name, for the benefit of a third party, without the knowledge or consent of his co-partner, such note cannot be proved against the firm assets.

{See Cutter v. Dingee, Case No. 3,518.}

{In bankruptcy. In the matter of Mary Irving and Benjamin H. Irving.}

E. T. Fellows, for assignee.

W. F. Scott, for creditor.

BLATCHFORD, District Judge. The notes in question being made by Wise and indorsed by Irving & Son, and taken by Wise to E. F. Mead to be discounted, and the money for them being given by Mead to Wise, the transaction showed on its face that the indorsements were only accommodation indorsements. E. F. Mead, and L. Mead through him, were, therefore, chargeable with notice that Irving & Son were only sureties for Wise, and that the notes had not passed through the hands of Irving & Son in the ordinary course of their copartnership business; and, if Mary Irving did not consent to the making of the indorsements, she is not liable on the notes. Is there anything to repel the presumption which arises from the face of the transaction? It is for the creditor to show affirmatively sufficient to rebut the presumption. It is entirely clear that Mary Irving knew nothing of the indorsements, and did not consent to the making of them. It is not shown satisfactorily that the indorsements were in any way for the benefit of Irving & Son, as a firm, or that any of the money paid for the notes was applied to the purposes of the firm or went into the hands of the firm. In view of the conflicting evidence of E. F. Mead and Charles Irving it cannot be regarded as established, that E. F. Mead, or L. Mead through him, had any information before taking the notes and paying the money for them, that the notes or the indorsements were for the benefit, to any extent, of the firm of Irving & Son. There is no doubt that E. F. Mead and L. Mead required the indorsement of Irving & Son before they would take the notes. But that is not sufficient. I cannot concur with the register in his finding that these notes were regularly indorsed by Irving & Son in accordance with the business transactions between them and Wise. On the contrary, it distinctly appears that this was the first occasion on which Benjamin H. Irving had indorsed with the firm name any note made by Wise. The proof of debt by L. Mead against the firm must be expunged.

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{Certain proceedings for contempt brought by the assignee against a mortgagee of the bankrupts were dismissed in Case No. 7,073.}

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