JONES ET AL. V. NEWSOM ET AL.

Case No. 7,484.
{7 Biss. 321.}[1]

Circuit Court, D. Indiana. Dec, 1876.

PARTNERSHIP ASSETS.

The assets of a firm in the possession of one of the partners are held in trust for the creditors of such firm, and if the partner in possession of them is afterwards adjudged bankrupt they are not assets in the hands of his assignee, and if he obtain possession of them he must account to the creditors of the firm for the proceeds.

Jones and William McEwen were partners in a banking business at Columbus, from January, 1865, to March 1, 1870. On the latter day Jones withdrew, leaving McEwen in possession, but without any formal dissolution. Shortly afterwards McEwen joined with him his sons, Gideon and Archibald, in the same business and continued it, using the same books that had been used by McEwen & Jones, until September, 1871, when the three McEwens were adjudged bankrupts. {Case No. 8,783.} The assignees in taking possession of the property and effects of the McEwens found among them certain choses in action and other personal property known to have been the property of McEwen & Jones at the time Jones withdrew. The firm of McEwen & Jones was insolvent. Jones demanded of the assignees that they should apply this property to the payment of the debts of McEwen & Jones, which they declined to do, but agreed with him to keep a separate account of all the effects of McEwen & Jones and hold them subject to the order of this court. This they have done, and in this cause they appear merely as stakeholders. The bill is filed by Jones and the creditors of McEwen & Jones, to compel the application of the funds of McEwen & Jones, in the hands of McEwen & Sons, to the payment of the debts of McEwen & Jones. Certain individual creditors of William McEwen, who were permitted to intervene, answer, and deny the title of McEwen & Jones and of their creditors, and insist that the title, after the dissolution of that firm and the bankruptcy of William McEwen, and the possession of the assignees under their deed of assignment, was in the assignees, as their trustees, and that no distribution of the fund can be made to the creditors of McEwen & Jones; or, if any, that it can at most only be rateably with them as creditors of William McEwen. Upon this state of facts the master reported a finding for the complainants. The individual creditors of William McEwen file exceptions to the report.

Baker, Hord & Hendricks and Herod & Winter, for complainants.

H. W. Harrington and McDonald & Butler, for intervening creditors.

GRESHAM, District Judge. William McEwen took the assets in question, clothed with a trust. In equity they belonged to the creditors of McEwen & Jones. William McEwen was the trustee of these creditors, and upon a proper application a court of eq-

uity would have compelled him to account to them for the trust property. The individual creditors of a surviving partner who has possession of the firm assets have no claim on those assets as against the firm creditors.

The fact that the creditors of McEwen & Jones failed to assert their right to these assets from the time of the virtual dissolution of that firm in March, 1870, until the bankruptcy of McEwen & Sons in September, 1871, cannot be said to amount to laches on their part. There is nothing in the evidence showing that McEwen & Sons ever paid a cent for these assets or claimed any title to them.

The adjudication of bankruptcy against William McEwen & Sons operated upon the

firm and the individual members of it, and transferred into the hands of the law their individual and partnership assets to be distributed to their individual and partnership creditors. Jones was not a party to that adjudication. As already stated, the assets of McEwen & Jones passed into the hands of McEwen, charged with the payment of the debts of that firm. A portion of those assets reached the hands of McEwen's assignees in bankruptcy. That portion is perfectly identified, and the assignees have kept a distinct account of it.

The assignees of William McEwen or of McEwen & Sons acquired no title under the deed of assignment to the assets which thus found their way into their possession. Amsinck v. Bean, 22 Wall. {89 U. S.} 395; Holland v. Fuller, 13 Ind. 195. Part of the debts of McEwen & Jones are still unpaid, and those unpaid creditors, or Jones as surviving partner, in their behalf, have a right to the assets in controversy. Exceptions overruled.

[1] {Reported by Josiah H. Bissell, Esq., and here reprinted by permission.}