IN RE VETTEELEIN ET AL.

Case No. 16,927.
{5 Ben. 311.}[1]

District Court, S. D. New York. Sept, 1871.

DISTRIBUTION OF INDIVIDUAL ESTATE OF A PARTNER—DIFFERENT FIRMS.

Bankrupts had been doing business in two different places under different firm names, and one firm appeared to be largely indebted to the other. The assignee in bankruptcy realized funds out of the individual estate of one of the partners; more than enough to pay his individual debts: *Held,* that the two firms were to be treated as one; that the proceeds of the separate estate, over and above the individual debts, were to be added to the joint stock; and that no notice was to be taken of the indebtedness of one firm to the other.

{Cited in Re Williams, Case No. 17,707; U. S. v. Reid, 17 Fed. 498.}

Prior to May, 1865, the firm of Vetterlein & Co., in Philadelphia, was composed of Theodore H. Vetterlein and Charles A. Meurer. On May 1, 1865, Bernhard T. Vetterlein and Theodore J. Vetterlein were taken in as partners. In February, 1870, Meurer retired from the firm. Prior to May 1, 1865, the firm of Th. H. & B. Vetterlein & Co., in New York, had been composed of Theodore H. Vetterlein, Bernhard Vetterlein and Henry Thiermann. On May 1, 1865, Bernhard Vetterlein and Henry Thiermann retired, and Bernhard T. Vetterlein and Theodore J. Vetterlein were taken in, and the business was conducted under the name of Th. H. Vetterlein & Sons, its only capital being the interest of Theodore H. Vetterlein in the former firm. In 1867 Theodore J. Vetterlein retired from both firms. On February 7, 1871, Theodore H. Vetterlein and Bernhard T. Vetterlein were adjudged bankrupts. The assignee in bankruptcy realized funds from the separate estate of Theodore H. Vetterlein, against whom no individual debts were proved. He also realized something from the assets of each of the firms. Th. H. Vetterlein & Sons were proved to be creditors of Vetterlein & Co. to the amount of $40,000. Different debts were proved against each of the two firms.

The following questions were raised by the assignee and submitted to the court: 1. Shall Th. H. Vetterlein & Sons and Vetterlein & Co. be treated as separate and distinct firms in the distribution of the assets? 2. What disposition shall be made of the proceeds of the estate of Theodore H. Vetterlein? 3. How shall the assignee treat the indebtedness of Vetterlein & Co. to Th. H. Vetterlein & Sons, as regards the distribution of the assets?

{For a prior proceeding, see Case No. 16,926.}

BLATCHFORD, District Judge. 1. Th. H. Vetterlein & Sons and Vetterlein & Co. ought not to be treated as separate and distinct firms in the distribution of assets belonging to Theodore H. Vetterlein and Bernhard T. Vetterlein, as copartners.

2. If there are no debts proved against Theodore

H. Vetterlein individually, the proceeds of his separate estate must, under section 36 [of the bankrupt act of 1867 (14 Stat. 534)], be added to the joint stock and property of the copartners, for the payment of their joint creditors.

3. The assignee ought to take no notice, in the distribution of the assets, of the indebtedness of Vetterlein & Co. to Th. H. Vetterlein & Sons.

In the foregoing conclusions, I assume that no other person is liable jointly with Theodore H. Vetterlein and Bernhard T. Vetterlein in the debts for which they are jointly liable, and that no other person is joint owner with them of the assets in which they are jointly interested.

[See Cases Nos, 16,928 and 16,929.]

[1] [Reported by Robert D. Benedict Esq., and here reprinted by permission.]