Case No. 17,313.

IN RE WEBB ET AL.

[2 N. B. R. 614 (Quarto, 183);[2] 2 Am. Law T. Rep. Bankr. 87; 9 Int. Rev. Rec. 169; 16 Pittsb. Leg. J. 43.]

District Court, S. D. Ohio. May, 1869.

BANKRUPTCY OF PARTNERSHIP—PRIORITY OF UNITED STATES—REVENUE BOND SIGNED BY INDIVIDUAL PARTNERS.

Where individual members of a co-partnership signed internal revenue tobacconist's bonds as accommodation sureties, and the firm subsequently being adjudged bankrupt, the collector of internal revenue holding the bonds, the conditions of which had been broken, proved the debts thereon in bankruptcy, and claimed payment out of the partnership assets by priority of distribution to the United States, *Held,* that the debts were individual debts, and the claim of the United States to prior payment out of partnership assets was not valid, but it would be good against individual assets.

In this case, the register, Flamen Ball, Esq., made the following report:

In pursuance of an order of reference, tome directed and issued by the court on the petition of Drausin Wulsin, Esq., assignee of said bankrupts, in the matter of the claim of Leonard A. Harris, collector of internal revenue of the United States, for the First district of Ohio, after notifying said collector, I sat at my office in Cincinnati, on, the 22d day of March, and on the 1st day of April, 1869, to hear such testimony as might be produced by either party in reference to the claim of the United States against said bankrupts, filed in this cause and having heard all the testimony offered by said parties, I do now herewith return the same, with a statement of the material facts proved, and the points of law arising thereon. On the 20th day of February, 1868, the said collector made and filed in this court proof of a claim in favor of the United States, and against the firm of William A. Webb & Co., amounting in all to the sum of nine thousand and seven dollars and fifty cents. As to the sum of seven dollars and fifty cents, part of said claim, there is no dispute; but the question at issue relates to the liability of the firm upon the two bonds, copies of which are exhibited with said evidence. These bonds were the ordinary bonds given to the collector by manufacturers of tobacco, and are designated as "Tobacconist's Bonds." The first was executed May 14th, 1867, by Robert Walter as principal, and William A. Webb and Gilbert M. Johnson as sureties, conditioned to pay the sum of five thousand dollars in case of default, and the second bond was executed by Samuel Lottier and Samuel R. Wade as principals, and by Mr. Webb and Mr. Johnson as sureties, conditioned to pay the sum of four thousand dollars in case of a similar default. The condition of each bond has been broken by the principals, and the United States, through their collector, claims the whole amount of both bonds as a preferred claim out of the assets of the late firm of William A. Webb & Co., now in the hands of the assignee. The assignee claims that the obligation of each bond is the obligation of the parties subscribing the same as

individuals, and that the same are not the obligations of the firm, and that the partnership debts must be first paid out of the partnership assets. There is no proof showing that either of these obligations was incurred by the partnership, but, on the contrary, the evidence shows that the firm derived

no benefit or advantage, as consideration for signing the same, but that they were merely accommodation sureties. Lottier & Wade were the principals in one bond, Robert Walter was the principal in the other.

It is conceded that if any assets should be realized from the separate estates of the sureties, those assets should be applied to the payment of this debt in preference to the individual creditors of the respective bankrupts; so, also, it is conceded that if a surplus of the partnership assets should remain after the payment of the partnership debts, such surplus should be so applied. The principle of law applicable to this case, in my opinion, is, that partnership assets must be first applied to the debts of the partnership; and that as this debt is not a debt of the partnership, but simply a debt of the individual partners, the claim of the United States must be postponed until all the debts of the partnership shall be paid from the assets of the partnership. This principle of law is sustained by the decisions of all courts everywhere, and it is fully recognized by the thirty-sixth section of the bankrupt law [of 1867 (14 Stat. 534)], which provides, inter alia, as follows: "And after deducting out of the whole amount received by such assignee, the whole of the expenses and disbursements, the net proceeds of the joint stock shall be appropriated to pay the creditors of the co-partnership, and the net proceeds of the separate estate of each partner shall be appropriated to pay his separate creditors." The partnership property is a fund appropriated by law to the payment of the partnership debts, and, as the liability of the several partners on the bonds now under consideration is binding upon them as individuals, and not on them as partners in a firm, I am clearly of the opinion that the claim asserted by the collector to priority in the distribution cannot be sustained.

LEAVITT, District Judge. The opinion of the register on the question stated by him is affirmed, and the assignee of the bankrupts is directed to allow and adjust the claims against the sureties in the bonds described in favor of the United States, on the basis that the claims against said sureties are against them in their individual capacities, and not as members of said firm.

[2] [Reprinted from 2 N. B. R. 614 (Quarto, 183), by permission.]

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