

Case No. 17,707.

{3 Woods, 493.}¹

IN RE WILLIAMS ET AL.

Circuit Court, N. D. Georgia.

Sept. Term, 1876.

BANKRUPTCY—PARTNERSHIPS.

Where the same partners carry on the same business at different places, under different partnership names, there are not two distinct firms; the assets of both nominal firms are equally applicable to the payment of all the creditors of both.

[Cited in *Campbell v. Colorado Coal & Iron Co.* (Colo. Sup.) 7 Pac. 292.]

Petition of review filed by the assignee in bankruptcy. The facts shown by the record are as follows: James J. Williams, of Atlanta, Georgia, and R. R. Anderson, of Loudon, Tennessee, composed the firm of J. J. Williams & Co., and carried on business in Atlanta, Georgia. The same persons composed the firm of Anderson & Williams, and carried on the same business in Loudon, Tennessee. The partners, under the firm name of J. J. Williams & Co., filed their petition in bankruptcy in the district court of the United States for the Northern district of Georgia, and included in their petition the firm of Anderson & Williams. There was a fund in the hands of the assignee, and the question was presented by the petition of review, how ought these assets to be distributed? The assignee claimed that there was in fact but one firm, and that the assets should be distributed pro rata between the creditors of J. J. Williams & Co. and Anderson & Williams. On the other hand, it was claimed by the creditors of J. J. Williams & Co., that there were two distinct firms, and that the assets of each should be applied to the payment of the creditors of each.

P. L. Mynatt, for petitioners.

No counsel opposed.

WOODS, Circuit Judge. Where parties agree to transact business jointly under a contract to share in the profits, the name or firm which they use is arbitrary and conventional. They may use the name of both or of one alone, or any distinct designation by which all of them will be bound as if all their names were used. They may trade under different firm names at different places, but it will be all one partnership:

Baring v. Grafts, 9 Metc. (Mass.) 380; Gage v. Rollins, 10 Metc. (Mass.) 348; Ex parte St. Barbe, 11 Ves. 413. To hold that where the same persons, carrying on the same business under two different firm names, the creditors holding claims nominally against one firm, are entitled to be first paid out of the assets held under that firm name, is in effect to decide that there are two partnerships, and that one of these partnerships may hold a claim against the other. But it has been held otherwise. Where all the partners are the same and they carry on the same business under different partnership names, they are the same firm, and the assets of both nominal firms are equally applicable to the payment of all the creditors. Colly. Partn. §§ 1000, 1003, 1004. See, also, Buckner v. Calcote, 28 Miss. 586, 587; In re Vetterlein, [Case No. 16,927]. On these authorities and principles I must hold that all the assets of J. J. Williams & Co. and Anderson & Williams are to be applied pro rata to the payment of all their creditors.

¹ [Reported by Hon. William B. Woods, Circuit Judge, and here reprinted by permission.]