

*IN RE SHEVILL AND OTHERS, BANKRUPTS.*

*District Court, E. D. New York. November 27, 1880.*

MORTGAGE—COVENANT IN.

The terms of a covenant in a mortgage—the agreement to pay the joint debt of two named parties, and any individual debt of either of them—will not cover a copartnership obligation of a firm composed of such parties and a third party.

BENEDICT, D. J. The difficulty in the way of allowing the First National Bank of Brooklyn to prove its debt against the individual property of Thomas Shevill and Benjamin Shevill, respectively, is that their demand rests upon a copartnership obligation of the firm of Thomas Shevill & Co., composed of Thomas Shevill, Benjamin Shevill, and Randolph N. Bowlby. The covenant in the mortgage given by Thomas Shevill and Benjamin Shevill does not help the case of the bank, for the reason that there is no promise to pay the debts of the firm of Thomas Shevill & Co. The covenant is simply to pay any joint debt of Thomas Shevill and Benjamin Shevill, and any individual debt of either Thomas or Benjamin Shevill. The debt sought to be proved is neither the joint debt of Thomas and Benjamin Shevill, nor the individual debt of Thomas or Benjamin Shevill, but the debt of a firm composed of Thomas Shevill, Benjamin Shevill, and Randolph N. Bowlby.

The proof of debt against the individual estates must be disallowed.

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