joint estate, and that the rest of the separate estate should be divided pro rata between both classes of creditors. Mr. Justice Gibson, afterwards chief justice, dissented vigorously, and declared himself in favor of the general rule. This, he said, was "founded in the most substantial justice," inasmuch as "the joint creditors have already an immense advantage over the separate creditors in being exclusively entitled to the partnership fund." "This exclusive liability of the partnership estate to the joint creditors is founded on no equity peculiar to themselves, but results from the nature of the contract of partnership, which requires the joint debts to be paid before the equity can be settled between the partners, each being individually liable till all is paid. Concede the present question to the joint creditors, and you give them, in effect, a monopoly of the insolvent's whole estate. What merit do they possess that the separate creditors may not lay claim to? In the usual course of transactions each class indiscriminately trusts to the whole estate, both joint and separate." "If, then, the policy of trade requires that the joint fund shall be appropriated, in the first instance, to payment of the joint debts, justice, equity, and conscience on the other hand, without interfering with that policy, demand that the separate creditors should, at least, have the miserable advantage of the same priority as regards the separate estate." The dissenting opinion of Mr. Justice Gibson is well worth study as a vigorous and independent discussion of the general principles of law upon which the rule depends. After prolonged hesitation, Bell v. Newman was explicitly overruled, and the general rule of distribution was definitely established in Pennsylvania. Black's Appeal, 44 Pa. St. 503; McCormick's Appeal, 55 Pa. St. 252.

In Maryland, the question first arose in McCulloh v. Dashiell's Adm'r, 1 Har. & G. 96, decided in 1827. Mr. Justice Archer, in delivering the opinion of the court, gave a history of the general rule, which, though not altogether full nor absolutely accurate, is fuller and better than any other to be found in any American report or textbook. He observed that it was difficult to say upon what the general rule and the exception in the absence of joint estate were founded, and he criticised especially the exception. Both, he declared, were settled and established in both bankruptcy and equity. This case has remained undoubted in the courts of Maryland.

In Murray v. Murray (1821) 5 Johns. Ch. 60, 72, Chancellor Kent gave the history of the general rule in England, not exactly in the traditional version, but imperfectly and inaccurately. The decision went upon another point. In Wilder v. Keeler (1832) 3 Paige, 167, Chancellor Walworth expounded and applied the general rule, rehearsing some part of the traditional history. He said nothing expressly about the exception in the absence of joint estate, though he expressed his disapproval of the decision in Cowell v. Sykes, 2 Russ. 191, in which the exception was applied by Lord Eldon. The general rule has been recognized in several later cases in the courts of New York, and in Bank v. Stewart, 4 Bradf. Sur. 254, the exception was expressly disapproved.

It is not necessary to discuss elaborately the history of the rule and of the exception in all those states of the Union whose courts have

dealt with the subject. The general rule has been followed or recognized in Mississippi (Oakey v. Rabb's Ex'rs, Freem. Ch. 546; Irby v. Graham, 46 Miss. 425, 430, 432); in Nebraska (Bowen v. Billings, 13 Neb. 439, 443, 14 N. W. 152); in Iowa (Hubbard v. Curtis, 8 Iowa, 1; Miller v. Clarke, 37 Iowa, 325); in Minnesota (Ives v. Mahoney, 73 N. W. 720); in Tennessee (Fowlkes v. Bowers' Heirs, 11 Lea, 144). In none of these states has there been found a case which deals with the exception in the absence of joint estate. Both the rule and the exception have been recognized in Alabama (Smith v. Mallory's Ex'r, 24 Ala. 628; Van Wagner v. Chapman's Adm'r, 29 Ala. 172; Evans v. Winston, 74 Ala. 349); in New Jersey (Davis v. Howell, 33 N. J. Eq. 72); in Illinois (Rainey v. Nance, 54 Ill. 29; Young v. Clapp, 147 Ill. 176, 32 N. E. 187, and 35 N. E. 372; Ladd v. Griswold, 4 Gilman, 25, 39); in Missouri (Level v. Farris, 24 Mo. App. 445; Hundley v. Farris, 103 Mo. 78, 15 S. W. 312); in Rhode Island (Colwell v. Bank, 16 R. I. 288, 290, 15 Atl. 80, and 17 Atl. 913; Pearce v. Cooke, 13 R. I. 184); in Wisconsin (Thayer v. Humphrey, 91 Wis. 276, 64 N. W. 1007); in Maine (Harris v. Peabody, 73 Me. 262). The exception has been somewhat doubtfully recognized in Georgia (Toombs v. Hill, 28 Ga. 371; Keese v. Coleman, 72 Ga. 658). The rule has been recognized, and the exception disapproved, in Indiana (Weyer v. Thornburgh, 15 Ind. 124; Warren v. Able, 91 Ind. 107; Warren v. Farmer, 100 Ind. 593), and in Massachusetts (Potters Works v. Minot, 10 Cush. 592). In New Hampshire the rule has been recognized, and the exception declared to be unreasonable, though it is established in bankruptcy. If there be no preference where there is no joint estate, it is said by the court that there should be no preference where there is no separate estate. Weaver v. Weaver, 46 N. H. 188, 192. In Ohio the rule was disapproved in principle, though admitted to be established in bankruptcy, in Grosvener v. Austin's Adm'rs, 6 Ohio, 104. In Rodgers v. Meranda, 7 Ohio St. 179, both the rule and the exception were approved. In Brock v. Bateman, 25 Ohio St. 609, where the joint estate was not sufficient to pay the costs, the exception was allowed to operate, and, in the confusion of mind caused by an attempt to reconcile the theory of the exception with the theory of the rule, the court declined to say what would happen where the partnership assets would yield to the joint creditors less than the separate assets would yield to the separate creditors. Plainly, the court was inclined to reduce the rule to a mere marshaling of assets. In Kentucky it appears to be established that the joint creditor may waive his right to proceed against the joint estate, and, if he does so, may share equally with the separate creditor in both joint and separate estate; otherwise, the separate creditor receives from the separate estate as large a dividend as the joint creditor has received from the joint estate, and thereafter joint and separate creditors are paid pro rata from the separate estate. Bank v. Keizer, 2 Duv. 169. The general rule has been disapproved in Vermont. The numerous exceptions ingrafted thereon, it is said, show that the rule rests on no satisfactory basis. Bardwell v. Perry, 19 Vt. 292. It has been disapproved in Connecticut (Camp v. Grant, 21 Conn. 41), and in Virginia (Pettyjohn v. Woodroof, 10 S. E. 715). In Kansas the matter seems to be left in some