BANKRUPTCY—PARTNERSHIP—CLAIMS.—*In re R. P. Brown and Co. et al.*, District Court, W. D., July 29, 1925.

R. P. Brown and Co., a partnership composed of R. P. Brown and J. D. A. Smith, was declared bankrupt under an involuntary proceeding brought by the Glover Grocery Co., Sheffield Co., and Waxelbaum & Bro., Inc. Both partners as well as the firm, were adjudicated bankrupts. The Grocery Co. claimed to be creditors in the amount of $4,265, a balance remaining unpaid on certain promissory notes; the Sheffield claim was of the same nature, in amount $541, and Waxelbaum and Bro. claimed as creditors to the extent of $185. All of the notes in question read "We promise to pay," and were signed by the partners as individuals, without mention of the firm name. The issue is based on the contention of the creditors named that they have a right to participate in the individual assets, although admitting that the notes were for goods furnished the partnership. Certain other individual creditors contest this alleged right of the claimants. *Held:* Notes signed by members of a partnership in their individual names, may, as here, support a claim in bankruptcy against the partnership. But, as in this case, where it is an admitted or proven fact that the notes in question were given for partnership obligations, creditors cannot also prove against the individual estates of partners.

It appears well settled that a note signed individually by a partner, but in fact for a firm obligation, constitutes a valid contract of the partnership. *Davis v. Turner,* 120 Fed. 605; *In re Weisenberg & Co.,* 131 Fed. 517; *Mack v. Stoddard,* 177 Fed. 611; *Adams v. Lumber Co.,* 202 Fed. 48; *In re Kendrick & Co.,* 226 Fed. 978.

Such a holding seems logical, and no more than would be expected in Equity or Bankruptcy, both of which look to the substance of the transaction rather than the form alone. In good conscience such courts cannot reasonably resort to a fiction or implication to give to an obligation a character other than its admittedly real one.

But a further issue is presented. By the cases supra, one contract was created, viz., between the creditors and the partnership. Can another, between creditor and individuals, be read into the same note?

A partner may render himself individually liable by reason of being a member of the partnership. He may become a surety, or guaranty. Often a partnership obligation states that "We and each of us promise to pay." Two or more contracts follow as a result, and

a partnership creditor may participate in firm assets, the individual creditor in individual assets.

An excellent discussion is contained in *Robinson v. Seaboard National Bank*, 247 Fed. 667, referred to in the principal case, and in 10 A. L. R. 842. In the Robinson case it is said: "This is not a case of double proof on a single contract, but of single proof of two separate contracts." These separate contracts may be embodied in one note.

The present case, however, is to be distinguished as concerning notes appearing to be nothing more than individual obligations of two men. Evidence dehors the instruments proves otherwise. In *Schall v. Camors*, 250 Fed. 6, the court draws a clear distinction between the liability of the firm entity and the individuals composing it. From the principal case it appears that in the administration of bankruptcy this distinction is carefully followed. Partnership assets must be devoted to the satisfaction of partnership debts before the creditors of the individuals can share therein. The reverse of the rule is likewise carefully followed. See 10 A. L. R. 846.

The real character of the transaction was not here in issue. The claims in question were exclusively firm obligations, and no separate contracts of guaranty are mentioned as a basis for individual claims. There is no showing of any benefit to the individual as such. While the decision is apparently in conflict with what would be expected from the face of each note considered alone, it is but another of the many cases where a court of conscience looks to the substance behind the form. R. B. T., '27.

CARRIERS—RAILROADS—*Helena Southwestern Railroad Co. v. Coolidge*, Supreme Court of Arkansas (October 19, 1925), 275 S. W. 896.

Plaintiff brought suit for damages to his alfalfa field which was caused by sparks from one of the defendant's engines. According to Section 8569 of the Arkansas Statutes railroads are liable if common carriers for property damage resulting from the operation of their trains. The defendant railroad was duly incorporated under the Arkansas Statutes, but denied its liability due to the fact that its small trackage was exclusively used to haul lumber from a planing mill to the tracks of the Missouri Pacific Railroad. *Held:* "When the defendant was organized as a railroad company . . . it became a