

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.

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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

common carrier, under the statute referred to, and has all the powers and is subject to all the restrictions of common carriers. If the defendant is a regular organized railroad company, it cannot cease to be a common carrier because it may only carry a particular kind of freight for a single customer. It could be compelled to carry freight to all who offered it for shipment over its line."

A common carrier is one who undertakes for compensation to transport goods of all persons who choose to employ him. (*Williams v. Kingston Mfg. Co.*, 175 N. C. 226, 95 S. E. 366.) In *Osage Tie and Timber Co. v. Gory-Murphy Timber and Grain Co.*, 191 S. W. (Mo.) 1026, the court laid down the rule that the test of whether one is a common carrier is whether there is an indiscriminate dealing with the general public.

The following cases will show that a private railroad established as an incident to a private business is not a common carrier. According to a Louisiana statute, all railroads were deemed to be common carriers, but the court held that a saw mill company which operated a switch line on a private grounds for private purposes, was not a common carrier. (*Wade v. Luther and Moore Cypress Co.*), 74 Fed. 517. In Wisconsin there was a statute which said, in effect, that every railroad company was liable for damages sustained by employees and caused by the negligence of other employees. The court held that this statute embraces within its provisions only railroads engaged in the general railroad business for the carriage of passengers and freight, and has no application to a private railroad operated in connection with a logging and lumber business. (*McKivergan v. Alexander and Edgar Lumber Co.*, 124 Wis. 60, 102 N. W. 332.)

*Taenzer and Co. v. C., R. I. & P. R. R. Co.* (170 Fed. 240) is a case with practically the same set of facts as *Railroad v. Coolidge*, *supra*. A spur railroad line was built by a lumber company on its own land to form a connecting line between its mill and the defendant railroad. This spur was built by the lumber company for the purpose of transporting its products to the tracks of the defendant railroad for shipment. The equipment of the spur railroad consisted only of an engine and a few logging cars. This spur railroad was held not to be a common carrier as it did not hold itself to the public as such.

According to the decisions of the above cases, the *Coolidge* case appears to have been decided contrary to the weight of authority, and appears to be completely irreconcilable to the decisions of numerous other cases with the same state of facts.

D. C. S., '26.