debt was contracted, the debt would be incurred by both firm and individual.

In that case I am unable to see why a claim might not be made against both estates. If the firm A. & Co. have creditors B., C., and D., and the partner A. have creditors D., E., and F., D. can claim against both estates if the claims against the firm and the individual are not the same. Why should he not claim if the amount be the same? He has required and obtained the security of two debtors instead of one; why should he not have the advantage of his precaution?

The rule laid down by the judgment of the Chief Justice appealed from would operate to prevent a creditor who knows that a firm is shaky, but one of its members in fairly good standing, and insists on getting the security of the man who is worth something, from being in any better position than the creditor who was content with the firm's paper.

Whether it be necessary to elect under our statute should be left open for further consideration: the question does not arise here; the plaintiff has elected within the time which the authorities lay down, i.e., before accepting a dividend: Ex p. Bentley, 2 Cox C. C. 218.

The foregoing is, I think, the result upon principle. But authority is not wanting.

In re Chaffey, 30 U. C. R. 64, is a decision upon (1864) 27 & 28 Vict. (Can.) ch. 17, sec. 5 (7), of which the wording is not dissimilar to the present sec. 7. It was there decided that where a member of a partnership indorsed a note of the partnership payable to himself, the indorsee could treat the individual partner as having incurred a separate liability by his indorsement distinct from his joint liability as maker, and might claim upon either estate. It was held that he must elect: but, as I have said, that question does not arise in this case.

With the present opinion accords the opinion of the Divisional Court in Frost and Wood Co. v. Stoddart, 12 O. W. R. 688, when directing a new trial. The judgment upon the new trial (12 O. W. R. 1133) indicates that the real defect in the admissions, namely, that it did not appear whether the notes, &c., in the hands of the creditors had been accepted as in satisfaction of the former so as to annul the effect of the former, was not brought to the attention of the learned trial Judge. If and so far as the judgment