

RIDDELL, J.:—The position of a partner in respect of liability for the debts of a partnership is quite clear. "Every partner is liable jointly with the other partners . . . for all debts and obligations of the firm incurred while he is partner." Partnership Act, 1890, sec. 9 (Imp.) He owes these debts quite as much as he owes debts incurred by him.

When our statute R. S. O. 1897 ch. 147, sec. 7, says, "If any assignor or assignors . . . owes or owe debts individually and as a member of a co-partnership," the case is contemplated of a person who is a member of a partnership incurring individual debts while the partnership incurs other debts which he owes as a member of the partnership under the rule above set out. The statute is introduced to make a statutory provision that the assets of the partnership are not to be used to pay the individual debts unless and until the partnership debts are provided for, and vice versa. This is the rule which has prevailed in England, and is laid down clearly by Lord Chancellor King in *Ex p. Cook*, 2 P. Wms. 500, who states the law as settled. It had been so decided by Lord Chancellor Harcourt in *Ex p. Crowder*, 2 Kemb. 706; and has not ever been varied in cases of bankruptcy.

And the estate to which recourse may be had without valid objection is, under the statute, the estate "by which the debt was contracted," i.e., determine whether the debt was contracted by partnership or by partner individually; and the debt of the partnership is entitled to share ratably in the partnership estate; the debt of the partner individually in the estate of the individual partner. The expression is, "the estates by which the debts . . . were contracted," not "the estates for the benefit or advantage of which the debts . . . were contracted." It makes no difference who may benefit by the transaction resulting in the debt—the whole question is, "who incurred the debt?"

For example, if a partner wished to furnish a house, and the tradesman made the agreement with the firm that the firm should pay, and the individual should not, the debt would not be one contracted "by" the individual, though for him and for his sole benefit; if a dealer were to sell to the firm, but with the stipulation that he was to be paid by an individual member of the firm, and this were agreed to, the debt would not be a debt of the firm but that of the individual partner. And if both firm and individual agreed to pay, it would make no difference for whose advantage the