

ley on Partnership, 7th ed., p. 87; Lovell v. Beauchamp, [1894] A. C. 607.

Upon my findings that there was no partnership in fact between William and John Smart, and that the business of "W. & J. Smart" was the property of William Smart alone, but that there was such a holding out of John Smart as a partner, as would, had he been *sui juris*, have rendered him personally liable to the plaintiffs, it is contended for them that in regard to assets of the business of "W. & J. Smart" they are, as against individual creditors of William Smart, entitled to the same priority which they would have had, had there been in fact a partnership of William Smart and John Smart carrying on business as "W. & J. Smart."

In *Ex p. Hayman*, 8 Ch. D. 11, the English Court of Appeal had to consider, under a bankruptcy adjudication, the rights of persons similarly situated, and held that the assets must be treated as joint estate of the actual owner and his reputed partner; and a personal creditor of the former was postponed to a claimant who had given credit to the supposed partnership firm.

In *re Rowland and Crankshaw*, L. R. 1 Ch. 421, also a decision of the English Court of Appeal, is the authority upon which the Court rests its judgment in *Ex p. Hayman*. The doctrine is broadly and unmistakably enunciated that in regard to the allocation of joint and separate assets to the payment of joint and separate claims, the rights of creditors are the same in the case of an ostensible partnership as they are where there has been a partnership in fact.

In *Baker v. Dawbarn*, 19 Gr. 113, Mowat, V.-C., held that the rule in equity, as well as in bankruptcy, is, that his separate creditors rank first upon the separate estate of each partner, while partnership creditors rank first upon joint estate of the partnership.

In *Ex p. Hayman*, Thesiger, L.J., at p. 25, said that but for the authority of *In re Rowland and Crankshaw*, L. R. 1 Ch. 421, and *Ex p. Sheen*, 6 Ch. D. 231, he "should have wished to hear further argument as to the consequences arising from an ostensible partnership in the event of bankruptcy, where there are both joint and separate creditors." The Lord Justice proceeds to point out the inapplicability of any principle of estoppel to the position of the separate creditor who is excluded from ranking upon assets of his debtor employed in the business of an ostensible partnership. He regards the consequence that such assets are to be deemed joint property