

HILARY J. MOORE, H. R. W. JOHNSON and **BEVERLY Y. PAYNE**, surviving executors of the late firm of G. Moore & Son, of Monrovia, Appellants, vs. **LEWIS SOLOMON** of Liverpool, transacting mercantile business under the firm name and style of Lionel Hart & Co., Appellee.

[January Term, A. D. 1900.]

Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.

Bill in Equity for relief against fraud.

Where after the death of a sole partner a new business was started under the name and style of the old firm, which by will was allowed, but the transactions were carried on for the sole benefit of the new partnership and was in no respect a continuation of the original firm, in a suit brought against the executors of the original firm to recover monies advanced the new partnership, upon the ground that the name of the firm was the same and that one of the executors of the original firm was the managing partner of the new firm, it was held that the suit could not be maintained against the executors of the original firm in the absence of proof showing that in that capacity the debt had been created by one or more of the executors. It was also held that the use of the original firm's name, where it had been allowed, did not constitute fraud unless it could be shown that the partners of the new firm misrepresented themselves, and that under a delusion with respect to the real members of the new firm, caused by their misrepresentations, credit had been given which otherwise would not have been given.

This case is before this court upon an appeal from the judgment rendered in the Court of Quarter Sessions and Common Pleas, Montserrado County. At the trial of the cause in the court below, the counsels representing the parties in the case, with the view to shorten the proceedings and to put the case before the court below in a concise manner, admitted certain points relative to the facts and submitted the following queries to the court for its consideration, to wit : Query 1. "Were Lionel Hart & Co. misled by the executors of G. Moore as to the status of the firm of G. Moore?" Query 2. "Ought Lionel Hart & Co. to lose the money?" Query 3. "If not, who is responsible for payment, the executors as trustees of the late firm, or in their individual capacity as private persons? Can the debtor obtain

expected and have brought the case before this court upon an appeal, for review.

After a careful examination of the evidence in the case and a careful research into the law applicable thereto, we have deliberately arrived at the conclusions, First, that it does not appear from the records that there has been fraud practiced upon Lionel Hart & Co., appellee, by the executors of the estate of G. Moore, nor any of them, in their capacity as such. Secondly, that the executors of said estate in their capacity as such cannot be made answerable and responsible to Lionel Hart & Co., appellee, for the payment of a debt not contracted by them jointly, nor by any one of them under color and by virtue of his executorship. And thirdly, that the estate of the late G. Moore now vested in the devisees mentioned in the will of the testator, cannot be held to pay a debt not created in the lifetime of the testator, nor by his executors after his death.

From the record in the case we find that G. Moore, who at the time of his death was the sole partner of the late firm of G. Moore & Son, made provision in his last will and testament for the continuance of his business after his death, should his sons so elect; that acting under this provision of said will Samuel Ford Moore, Hilary John Moore and Urias A. Moore, sons of the said testator, conducted mercantile business under the name and style of G. Moore & Son, in which business the said Hilary J. Moore appears to have acted as manager or agent; that for the sole benefit and trade of said firm, Hilary J. Moore in his capacity as agent for said firm and not as an executor of the estate of G. Moore, contracted the debt which Lionel Hart & Co., appellee in this suit, seeks to recover.

Before proceeding further we would observe, that from the business letters that were written to said appellee by H. J. Moore as the agent of said firm, as well as from the entire conduct of said firm towards the appellee, we have discovered no grounds upon which to draw a legal inference of an intent to commit either positive or constructive fraud. Nor do the said communications disclose the fact that means of cunning, deception or artifice were employed to induce Lionel Hart & Co., appellee, to deal with and credit said firm, at any time, or in any wise to mislead said firm. It does appear that at the time the debt was contracted, the said firm of G. Moore & Son, of which H. J. Moore was, acting agent, did really exist and was actually conducting mercantile business at Monrovia under the name

limit or definition. But it is also held that to constitute fraud there must exist artifice, deception, or cheat."

We shall now consider our second proposition. It was impliedly expressed in one of the queries submitted for the consideration of the court below, that the executors of the estate of G. Moore & Son having stood by and allowed the transaction to go on, cannot absolve themselves from responsibility to third parties, who by their negligence have been misled; and this position was maintained by the counsel conducting the defense, in his arguments.

We would state as a general rule, that ordinarily an executor is responsible when there is negligence or improper conduct in administering an estate, and that for all maladministration or mismanagement of the estate the executor is liable in a court of equity. But Judge Story observes in his learned treatise on Contracts, "Courts are, however, extremely liberal in respect to executors and will not render them liable on slight and trivial grounds." (Story on Contracts, p. 335, sec. 289.) In the case under review the executors of the late G. Moore & Son's estate cannot be held responsible (as executors) to Lionel Hart & Co., appellee, for the debt he seeks to recover, nor can the said estate be made answerable for the payment thereof, for the foregoing reasons.

It is the opinion of this court, therefore, that the court below erred in ruling that Lionel Hart & Co. shall recover from the estate of G. Moore & Son the debt sued for by appellee, with interest and costs, and this court hereby reverses the said judgment of the court below. And this court further says that in order that substantial justice may be meted out in all the premises to all parties concerned, and the appellee obtain the relief to which he is entitled, this court, recognizing its authority conferred by law in matters of appeal to give such judgment as the court below ought to have given, when there are good grounds for reversal, will proceed to the rendition of its decision in the case.

This court decrees that H. J. Moore, the surviving partner of the firm lastly conducting mercantile business in the city of Monrovia under the name and style of "G. Moore & Son," in whom by operation of the last will and testament of G. Moore the contingent remainders of the estate devised to Samuel Ford Moore and Urias A. Moore, his co-

