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as well as to those of the firm. Under such circumstances, not being written in the name of the firm, it cannot be presumed that the other partner had knowledge of its contents, and sanctioned them, unless some proof to that effect was offered to the jury. If the other partner did not know of the letter, or sanction its contents, it is plain, that he ought not to be bound by them; and such was the instruction given to the jury.

Upon the whole, our opinion is, that the judgment of the court below ought to be affirmed, with six per cent. interest, and costs.

THIS cause came on to be heard, on the transcript of the record from the district court of the United States for the district of Mississippi, and was argued by counsel: On consideration whereof, it is now here adjudged and ordered by this court, that the judgment of the said district court in this cause be and the same is hereby affirmed, with costs and damages, at the rate of six per centum per annum.

*BENJAMIN R. LYON and others, Plaintiffs in error, *v.* JAMES [*234
AUCHINCLOSS & COMPANY.

Bail.—Insolvency.

Bail was entered in the district court of the United States for the eastern district of Louisiana, for a defendant, against whom a suit was brought on certain promissory notes; the bail having been fixed, proceedings were afterwards commenced against them; and defence was taken, on the ground, that the plaintiff had made himself a party to a proceeding under the insolvent laws of Louisiana, which the principal had instituted against his creditors, and in which he had failed to obtain the relief allowed by those laws; a judgment having been given against him on his petition, in the district court in which they were instituted, and in the supreme court of Louisiana, to which he carried them by appeal: *Held*, that if the benefit of the insolvent laws had been extended to the principal, before the bail was fixed by proceedings against him, it might have become a question, whether they were not discharged, under the rule laid down by the court, in the case of *Beers v. Haughton*, 9 Pet. 329; but as the proceedings of the principal, for the benefit of those laws, were dismissed, on objections of the creditors, both in the district and supreme court of Louisiana, the bail can claim no exemption from the obligations of their bond, on account of those proceedings.

ERROR to the District Court for the Eastern District of Louisiana.

This case was argued, at the January term 1837, by *Butler*, for the plaintiffs, and by *Key*, for the defendants; and was held under advisement until this term; an examination of the rules of practice established by the district judge of the United States of the district of Louisiana, having been considered proper. The case is fully stated in the opinion of the court.

McLEAN, Justice, delivered the opinion of the court.—This case is before this court, from the district court for the eastern district of Louisiana, on a writ of error. An action was brought by Auchincloss & Co., against Nathaniel M. Riker, on certain promissory notes amounting to \$2545. The defendant was arrested on a *capias*, and gave bond, with sureties, in the penal sum of \$3500; that, should he be cast in the suit, he would pay the judgment, or surrender himself in execution to the marshal. At the May term 1835, a judgment in favor of the plaintiffs *was entered in the case; and in June following, a writ of *feri facias* was issued on [*235 the judgment, which was returned, "no property found." In December of the same year, a *capias ad satisfaciendum* was issued, which was returned by

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the marshal, "that the defendant could not be found." And afterwards, in February term 1836, on motion of plaintiffs' counsel, and on showing to the court that a *ca. sa.* had been issued and returned *non est inventus*, it was ordered, that the defendants' bail, Abraham B. Walker, Benjamin R. Lyon, and Pierre L. Baucher and Charles Gardiner, executors of P. P. Hall, show cause why judgment should not be entered against them, &c. And at the same term, B. R. Lyon, one of the bail, appeared by counsel, and reserving to himself the benefit of all exceptions to the rule taken in the case, filed the following pleas:—1. He admits his signature to the bond sued upon, but denies that it creates any obligation, whereupon he files the general issue. 2. That the said Auchincloss has made himself a party to the insolvent proceedings of the defendant, Riker, in this state, and is bound thereby, &c. On the 1st of March following, the court having maturely considered the rule taken on the bail of the defendant, order and adjudge that the same be made absolute; and a judgment is entered against the bail.

In the course of the trial, the defendants offered in evidence the record of a suit in the first district of the state, entitled "*N. M. Riker v. His Creditors*," to prove that plaintiffs had made themselves parties to the proceedings in the said suit; to the introduction of which record the plaintiffs objected, on the following grounds:—1. That if the defendant were present, he could not avail himself of said record; and that his sureties could not. 2. That the defendants did not offer the record to prove the discharge of Riker by his creditors, under the state insolvent laws; and that it could not be offered for any other purpose. 3. That it was admitted, opposition had been made in the state court by the creditors of Riker, which the court sustained; and that he appealed to the supreme court, where his suit against his creditors was dismissed; that the record offered, contained only the proceedings which were had in the inferior court. But the court overruled the objections, and admitted the record as evidence.

*And the counsel for the bail moved the court that they be discharged, as it appeared, that Auchincloss, by his attorney, made opposition to the proceedings of Riker against his creditors, as shown by the record in evidence; but the court overruled the motion; and to this ruling of the court the defendants excepted. This proceeding against the bail is in conformity to the Louisiana practice.

By the record admitted in evidence, it appears, that Riker, in May 1835, filed his petition in the first judicial district court of Louisiana, representing his embarrassed condition, and his inability to pay his debts; and he prayed that a meeting of his creditors should be called, to whom a surrender of his property could be made; and that the relief given by law to unfortunate debtors might be extended to him. A schedule of the debts against him, and of his property, and the debts due to him, was filed; and objection being made by his creditors to the relief prayed for, it was refused by the court. And from this judgment of the court, an appeal was taken by Riker, to the supreme court of the state. The result of this appeal is stated in the first bill of exceptions, as admitted by the parties.

It appears, by a certified copy of the rules made by the district judge, since 1824, that the insolvent laws of Louisiana have been adopted; but this was not done, until subsequent to the rendition of the judgment against

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the bail in this case. This court have had frequent occasion to consider the act of 26th May 1824, which authorizes the district judge of Louisiana to make rules of practice ; but until such rules shall be adopted, it provides, that the modes of proceeding, in civil causes in the district court, shall be conformable to the laws directing the mode of practice in the district courts of the state. If the benefit of the insolvent law had been extended to Riker, before the bail were fixed, it might have become a question, whether they were not discharged, under the rule laid down by this court in the case *Beers v. Haughton*, 9 Pet. 329. But as the proceedings of Riker against his creditors were dismissed, on their objections, both in the district and supreme court, the bail can claim no exemption from the obligations of their bond, on account of these proceedings. A judgment has been obtained against Riker, which he has not satisfied, nor surrendered himself in discharge of his bail ; and they have taken no steps to discharge themselves, *either by paying the judgment or surrendering their principal. [*237 The judgment against the bail must, therefore, be affirmed, with costs.

THIS cause came on to be heard, on the transcript of the record from the district court of the United States for the eastern district of Louisiana, and was argued by counsel : On consideration whereof, it is now here adjudged and ordered by this court, that the judgment of the said district court in this cause be and the same is hereby affirmed, with costs and damages, at the rate of six per cent. per annum.

*JAMES WHITE, Plaintiff, v. HIRAM TURK, JAMES VAUGHAN and [*238
WILLIAM GRANT.

Certificate of division

The intention of congress, in passing the act, authorizing a division of opinion of the judges of the circuit courts of the United States to be certified to the supreme court, was, that a division of the judges of the circuit court, upon a single and material point, in the progress of the cause, should be certified to the supreme court for its opinion, and not the whole cause. When a certificate of division brings up the whole cause, it would be, if the court should decide it, in effect, the exercise of original, rather than appellate jurisdiction. *United States v. Bailey*, 9 Pet. 367, cited and approved.

CERTIFICATE of Division from the Circuit Court of East Tennessee.

Coxe, for the plaintiff. No counsel appeared for the defendants. The case is fully stated in the opinion of the court.

MCKINLEY, Justice, delivered the opinion of the court.—This is a case certified to this court from the circuit court of the United States for the eastern district of Tennessee. A petition was filed by the defendants, Vaughan and Grant, stating that a judgment had been rendered in that court, in favor of the plaintiff, against the said Turk, at the October term 1834, for the sum of \$893.67 ; that said Turk had been arrested upon a *ca. sa.*, issued upon said judgment, and that the other two defendants had become his sureties in a bond, with condition that he should make his personal appearance at the court-house in Knoxville, on the second Monday of October next thereafter ; then and there to pay a debt recovered by James