The Mutual Savings Institution v. Bredow, Theodore 1859 St. Louis 424/5

Old Box 605/25

M 59
F 58
R&R Rich
A = N Holmes

28
181

CoA = Hover

O: upon death title to notes vested in K & had power OK
before E qualified to transfer notes in pymt of part. liability
improperly excluded witness b/c he was stockholder

Alpheus E. Koehls & Henry Golberg

Koehls & Golberg
had 2 notes payable to partnership endorsed to MSI for collection & as security for debt to MSI

partnership dissolved a few days before G died; widow was exec. & she didn't give bond to authorize her to administer part. effects
K gave Rudolph Macwitz POA to settle affairs
K never gave bond
M assigned notes to Bredow & S Chaffler
MSI wouldn't give up notes
debt to MSI cleared; notes never collected

Charles Enslin new admin. for G gave bond to admin. part.
MSI gave notes to him
S assigned interest to B
B wants damages for wrongful conversion of notes

LC = Bredow $638.05

State of Missouri }
County of St Louis } Be it remembered that heretofore to wit; on the Nineteenth day of February AD Eighteen hundred and fifty Eight there was filed in the Office of the Clerk of the St Louis Court of Common Pleas within & for the County aforesaid a certain petition which is in the words and figures following to wit;

Petition

Theodore Bredow vs The Mutual Savings Institution.	In the St Louis Court of Common Pleas March Term 1858. St Louis County Ss.

Plaintiff states that heretofore to wit in the year 1856 the firm of Koch & Goldberg a firm composed of Alphonse E Koch and Henry Goldberg were the owners and holders of two promissory notes made payable to their order One for the sum of four hundred and thirty seven 94/100 dollars made by F. H. Heideman of Peoria Illinois and the other for the sum of Two hundred 07/100 dollars made by H. A. Bodeman of Muscatine Iowa. That for the purpose of collecting said two notes the said Koch one of said firm deposited the same with the defendant a corporation then engaged in the Banking business in the City of St Louis, that about the time the said notes were so deposited with defendant for collection the said Henry Goldberg one of said firm de-

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parted this life and the said Alphonse E. Koels being about to depart for Europe by his power of attorney dated the sixteenth day of October 1836 and recorded in the Recorders Office of Lowndes County in Book 183 page 124 appointed and constituted one Rudolph Mackwitz his attorney in fact among other things to settle up the business of the said firm of Koels & Goldberg of which firm the said Koels was at the time surviving partner. Plaintiff further states that on the 15th day of August 1836 said firm of Koels & Goldberg for the purpose of raising money executed a negotiable promissory note for the sum of six hundred dollars payable sixty days after date to the order of themselves & endorsed by themselves and one Chas Brüggerhof that at the request of said Koels & Goldberg and as an accomodation to them the firm of Bredow & Schaffler a firm composed of this plaintiff and one Christian Schaffler also endorsed said note and the said Koels & Goldberg negotiated the same and received the proceeds thereof. Plaintiff further states that after the death of said Goldberg and the departure of said Koels from this State the said note remaining unpaid the said Rudolph Mackwitz as attorney in fact for said Koels and by virtue of the authority in him vested by said power of attorney, and for the purpose of securing and holding harmless the said firm of Bredow and Schaffler from

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the payment of said last named note & interest
damages & protest on the same so endorsed by
them as aforesaid by an instrument in writing
under his hand bearing date on or about the first
day of December 1856 assigned transferred and
set over to said firm of Bredow & Schaffler
the said two notes hereinbefore first described
which had been before that time deposited by
said Koels with defendants for collection, and did
in and by said instrument in writing authorize
and empower the said Bredow & Schaffler to demand
& receive of the defendant the said two notes or the
proceeds of the same if they had been or should
thereafter be collected by said deft and to receipt
to Defendant for the same. Which said assignment
and transfer said plaintiff immediately thereafter
to wit on the second day of December 1856 pre-
sented at the Counter of the place of business of
Defendant to one Adolph Pohl the Secretary &
Treasurer of Defendant and the person then in
charge of Defendants Office and business and
demanded of said Secretary & Treasurer said
Plaintiff state that said defendant by her secretary & treasurer accepted & received said assignment & and transfer but refused & neglected and have hitherto refused & neglected to deliver said two notes or the proceeds of the same
notes or the proceeds of the same, to plaintiff or to
the said firm of Bredow & Schaffler, although the
same have been often demanded of Deft Plaintiff
states that immediately after the delivery of said
assignment & transfer to said firm of Bredow &
Schaffler the said firm were obliged to, and did
pay and take up the said note of Koels & Gold-

berg so endorsed by Plffs said firm as aforesaid whereby the said firm of Koels & Goldberg became indebted to Predow & Schaffler in the summ of said note of $100 interest protest & damages on the same, and the said Predow and Schaffler were entitled to have and receive of said defendant the said two notes so assigned to them as aforesaid or the proceeds thereof to secure and hold them harmless from the said indebtedness of Koels & Goldberg to them. Plaintiff states that afterwards and on or about the 15th day of January 1857 the said firm of Predow & Schaffler was dissolved by Mutual consent and this plaintiff purchased of said Schaffler and said Schaffler sold and assigned to plaintiff all his said Schaffler's interest in the business and assets of said firm of Predow & Schaffler whereby this plaintiff became the assignee of said Schaffler & owner of said two notes & the proceeds of the same first above described. Plaintiff states that the said two notes so held by said defendant for collection as aforesaid have long since become due and payable and the makers of the same are and were abundantly able to pay said notes And this plaintiff has since said notes became due demanded of defendant the proceeds of the same but defendant has ~~neither~~ hitherto neglected and refused and still does neglect and refuse to pay the same or any part thereof to plaintiff

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or to deliver Plff said notes, Wherefore plaintiff asks judgment against said defendant for the amount of said two notes and interest on the same from the time they respectively became due & payable.

Plaintiff states that he does not know and cannot ~~tell~~ state the exact dates of said notes or the time when the same became due and payable and prays that said defendant may be required to disclose the same, Plaintiff states that at the time he presented said assignment and transfer of said two notes at the counter of Defendant for the purpose of notifying defendant of said assignment & transfer the said Secretary and Treasurer of defendant desired and requested plaintiff to leave the same in the Office of defendant for a few days so that he could lay it before the Board of Directors of Defendant, Plaintiff consented to that arrangement and did leave said assignment & transfer with said Secretary and Treasurer of Defendant since which time Plaintiff has been unable to obtain the same from defendant although he has repeatedly demanded the said assignment and transfer of the Treasurer & Secretary and other officers of Defendant, But the said Officers of defendant have constantly refused and still do refuse to deliver said assignment & transfer to Plff wherefore plaintiff prays that said defendant may also be required to produce said written.

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agreement ~~[illegible]~~ and transfer in Court on the trial of this cause and the plaintiff prays for such other and further relief as to the Court may seem just & proper in the premises.

Gardners attys for Pltff.

Theodore Bredow Plaintiff being duly sworn on his oath states he believes the foregoing petition and the matters therein as stated are true

Subscribed & sworn to before me this 19th Feby 1858. Theodore Bredow.

C. W. Hicks clk.

Thereupon issued the following Summons.

County of St Louis ss.

The State of Missouri

To the Sheriff of St Louis County Greeting;

We command you to summon The Mutual Savings Institution to appear before the Judge of our Court of Common Pleas on the first day of the next term thereof to be held in the City of St Louis within and for the County of St Louis on the Second Monday of March next then and there to answer the complaint of Theodore Bredow as set forth in the annexed petition; and have you then and there this writ;

Summons

Seal Witness Charles W. Hicks Clerk of our said Court with the seal thereof hereto affixed at office in the City of St Louis this 19th day of Febry in the year of our Lord eighteen hundred and fifty eight

C. W. Hicks clerk

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Shff's Return

On said Summons the Sheriff made the following Return, &c

Executed this writ in the County of St Louis on the 19th day of Febry 1858 by delivering to the President of the Mutual Savings Institution, John Cavendy a certified copy of the within writ & petition as furnished by the Clerk.

James Castello Shff by G. P. Bernstein Dpty.

And afterwards on the 15th day of May 1858 the following amended petition was filed, to wit;

Amended Petition

And now at this day comes the said plaintiff and by leave of the Court files this his amended petition and states that heretofore to wit in the year 1856 the firm of Koels & Goldberg a firm composed of One, A. E. Koels & Henry Goldberg were the owners and holders of two promissory notes made payable to their order one for the sum of four hundred and thirty seven 96/100 dollars made by J. N. Heideman of Peoria Illinois, and the other for the sum of Two hundred 17/100 dollars made by H. A. Bodeman of Muscatine Iowa, That for the purpose of collecting said two notes the said firm of Koels & Goldberg deposited the same with the defendant a corporation engaged in the Banking business in the City of St Louis. That shortly after the said notes were so deposited with the defendant & on or about the 27th day of August 1856 the said firm of Koels & Goldberg by

mutual consent was dissolved and each member of said firm was by the terms of said dissolution authorized to settle the business and liabilities of said firm and to use the name of said late firm in liquidation and the said Koels and Goldberg did cause a notice of such dissolution to be published in the Anzeiger des Westens" a daily newspaper printed in the German language in the City of St Louis and in the Daily Missouri Republican in the words following to wit; Notice The partnership heretofore existing between the undersigned under the firm of Koels & Goldberg has by mutual consent and on account of sickness of Mr Goldberg this day been dissolved Either party may use the name of the firm only in liquidation. (signed) A. E. Koels St Louis August 27th 1856. Henry Goldberg. which said dissolution and the terms thereof was at the time well known to the Managing officers and agents of the defendant. Plaintiff states that after said dissolution and some time in the month of September 1856 the said Goldberg departed this life and the said Koels being about to depart for Europe by his power of attorney dated the 10th day of October 1856 and recorded in the Recorders Office of St Louis County in Book 188 page 124 appointed and constituted one Rudolph Mackwitz his attorney in fact among other things

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to settle up the business of the said late firm of Koels & Goldberg. Plaintiff further states that on the 15 day of August 1854 said firm of Koels & Goldberg for the purpose of raising money & for their own accomodation and benefit executed a negotiable promissory note for the sum of six hundred dollars payable sixty days after date to the order of themselves & endorsed by themselves and one Prüggerhof that at the request of said Koels & Goldberg and as an accomodation to them, the firm of Bredow & Schaffler a firm composed of this plaintiff and One Christian Schaffler also endorsed said note, and the said Koels & Goldberg negotiated the same and received the proceeds thereof. Plaintiff states that after the dissolution of said copartnership of Koels & Goldberg and the departure of said Koels for Europe, the said note having been protested for non payment and remaining unpaid the said Rudolph Mackwitz as attorney in fact of said Koels and by virtue of the power and authority in him vested by said power of attorney and for the purpose of liquidating and discharging the indebtedness of said late firm of Koels & Goldberg on said note and of holding harmless the said firm of Bredow & Schaffler from the payment of said last named note & the interest damages & costs of protest which had accrued on the same by an instrument in writing under his

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hand bearing date on or about the first day of December 1856 assigned transferred and set over to said firm of Bredow & Schaffler the said two notes herein before first described which had been before that time deposited with defendants aforesaid by said Koels & Goldberg and did in and by said instrument in writing authorize and empower the said Bredow & Schaffler to demand & receive of the defendant the said two notes or the proceeds of the same if they had been or should thereafter be collected by said defendant, and to receipt to defendant for the same, which said assignment and transfer said plaintiff immediately thereafter to wit; on the second day of December 1856 presented at the counter of the place of business of defendant to one Adolph Wohl the secretary and treasurer of Defendant, and the person then in charge of defendants office and business, and demanded of said Secretary and Treasurer said notes or the proceeds of the same Plaintiff states that said defendant by her Secretary & Treasurer accepted and received said assignment & transfer but refused and neglected and have hitherto refused and neglected to deliver said two notes or the proceeds of the same to plaintiff or to the said firm of Bredow & Schaffler although the same have been often demanded of Deft. Plaintiff states that immediately after the delivery of said assignment & transfer to said firm of Bredow & Schaffler, they

11 the said Bredow & Schaffler were obliged to and did pay and take up the said note of Koels & Goldberg so endorsed by plaintiffs said firm as aforesaid whereby the said Koels & Goldberg became indebted to Bredow & Schaffler in the amount of said note of $600 $\frac{00}{100}$ interest protest and damages on the same and the said Bredow & Schaffler were entitled to have and receive of said Defendant the said two notes so assigned to them as aforesaid or the proceeds thereof to secure and hold them harmless from the payment of said $600 $\frac{00}{100}$ note and to liquidate the indebtedness of the said Koels & Goldberg on said note to them the said Bredow & Schaffler.

Plaintiff states that afterwards and on or about the 15th day of January 1857 the said firm of Bredow & Schaffler was dissolved by mutual consent and this plaintiff purchased of said Schaffler and said Schaffler sold and assigned to plaintiff all his said Schafflers interest in the business and assets of said firm of Bredow and Schaffler. Whereby this plaintiff became the assignee of said Schaffler and sole owner of said two notes & the proceeds of the same first above described. Plaintiff states that the said two notes so held by Defendant as aforesaid have long since become due and payable and the makers of the same are and were abundantly able to pay said notes and this plaintiff has since said notes became due demanded of Defend-

12 and the proceeds of the same. But defendant has hitherto neglected & refused and still does neglect & refuse to pay the same or any part thereof to plaintiff or to deliver plaintiff said notes, wherefore plaintiff asks judgment against said defendant for the amount of said two notes and interest on the same from the time they respectively became due & payable, and for such other relief as in justice and equity Plff is entitled to. Plaintiff states that he does not know and cannot state the exact dates of said notes or the time when they became due & payable and prays that defendant may be required to disclose the same.

Plaintiff further states that at the time he presented said assignment and transfer of said two notes at the counter of Defendant for the purpose of notifying defendant of said assignment and transfer the said Secretary and Treasurer of Defendant desired & requested Plaintiff to leave the same in the Office of Defendant for a few days so that he could show it to the Board of Directors of Defendant. Plaintiff consented to and did leave said assignment & transfer with the said Secretary and Treasurer of Defendant since which time plaintiff has been unable to obtain the same from Defendant although he has repeatedly demanded the said assignment and transfer of the Treasurer Secretary and other officers of Defendant, But the said officers of defendant have constantly refused and still do refuse to

13 deliver said assignment & transfer to Pfff. Wherefore plaintiff prays that the said defendant may also be required to produce said written assignment and transfer in Court on the trial of this cause or in default thereof that plaintiff be permitted to gave parol testimony of the contents thereof.

Gardners attys for Pfff.

Theodore Bredow plaintiff being duly sworn says on his oath he believes the foregoing petition and the matters therein as stated are true.

Subscribed and Sworn to before me this 14th day of May 1858. Theodore Bredow.

C. W. Nicks clk.

And afterwards to wit; on the 21st day of May AD 1858 the following answer to amended petition was filed to wit;

Answer to Amended Petition.

And the said defendant for answer to said amended petition says that he has not sufficient knowledge or information on which to form a belief (except as hereinafter mentioned) as to whether or not Alpheus E. Koehls and Henry Goldberg composing the firm of Koehls & Goldberg were the owners of the two notes in said petition mentioned as in said petition stated and requires proof thereof: and defendant denies that said two notes were deposited with defendant for collection as in said petition stated, or otherwise than as hereinafter stated.

Defendant has not sufficient knowledge or information on which to form a belief as to whether or

not the said firm of Koehls & Goldberg was on or about the 27th day of August in the year 1854 by mutual consent dissolved and each partner authorized to settle the business of said firm and use the name of the firm in liquidation, nor as to whether or not notice of such dissolution was published in the manner stated in said petition and requires strict proof of these allegations. Defendant admits that in the month of September 1854 the said Henry Goldberg departed this life and that soon thereafter the said Alphens E. Koehls left this state and departed for Europe: but this defendant has not sufficient knowledge or information on which to form a belief as to whether or not the said Koehls by his power of attorney, dated the 11th day of October 1854 appointed and constituted one Rudolphy Mackwitz his attorney in fact among other things to settle up the business of said late firm of Koehls & Goldberg and requires proof thereof. Defendant has not sufficient knowledge or information on which to form a belief as to whether or not the said firm of Koehls & Goldberg on the 15th day of August 1854 executed a negotiable promissory note for the sum of six hundred dollars payable sixty days after date thereof to the order of themselves endorsed by themselves and one Frederick Ruggerhoff nor as to whether or not the said firm of Pirson & Schaffler composed of plaintiff and Christian Shaffler at the request of said Koehls & Goldberg, and as an accommodation to them endorsed said note; nor as to whether said Koehls & Goldberg negotiated the same

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and received the proceeds thereof; nor as to whether after the death of said Goldberg and the departure of said Kuels from this State said note remaining unpaid the said Rudolph Mackwitz by virtue of the authority in him vested by said power of attorney and for the purpose of securing and holding harmless the said firm of Predor & Shaffler from the payment of said last mentioned note by an instrument in writing under his hand dated on or about the 1st day of Dec 1856 assigned, transferred or set over to said firm of Predor & Shaffler the two notes first above mentioned, and thereby authorized and empowered said Predor & Shaffler to demand & receive of the defendant the said two notes or the proceeds thereof, if they had been or should be thereafter collected by defendant, and to receipt for the same, and the defendant requires proof thereof and denies that said Predor & Shaffler had thereby any power to demand and receive said two notes or the proceeds thereof from this defendant.

Defendant has not sufficient knowledge or information on which to form a belief as to whether or not the plaintiff on the 2d day of December 1856 presented said assignment and transfer to one Adolph Kohl the Secretary and Treasurer of the defendant, and demanded of said Secretary and Treasurer said notes or the proceeds thereof; nor as to whether defendant by her said Secretary & Treasurer accepted & received said assignment & transfer; nor whether said notes or the proceeds thereof have been often demanded

16. by the plaintiff, or by said Bredow & Shaffler; nor as to whether or not said firm of Bredow & Shaffler paid said note of Koehls & Goldberg; nor whether said Koehls & Goldberg became indebted to said Bredow & Shaffler, for the amount of said notes interest protest & damages; and requires proof thereof: and defendant denies that said Bredow & Shaffler were entitled to have & receive said two notes or the proceeds thereof for any purpose from the defendant.

Defendant has not sufficient knowledge or information on which to form a belief as to whether or not said firm of Bredow & Shaffler was on or about the 15th day of January 1857 dissolved nor whether said Shaffler sold and assigned all his interest in the business and assets of said firm to the plaintiff; but defendant denies that the plaintiff thereby acquired any right to have and receive of the defendant the possession of said two notes, or the proceeds thereof.

Defendant has not sufficient knowledge or information on which to form a belief as to whether or not the makers of said two notes or either of them, were able to pay said notes or either of them, when due, but denies that the same ever were paid to this defendant; nor as to whether or not the plaintiff since said two notes became due and payable while the same or either of them was in the possession of this defendant demanded the same or either of them or the proceeds thereof of this defendant and requires proof thereof

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and this defendant not having said notes in her possession cannot give & disclose the exact dates thereof. And this defendant has not sufficient knowledge or information on which to form a belief as to whether or not when said supposed assignment was presented at the counter of defendant for the purpose of notifying said defendant of such assignment & transfer, the Secretary & Treasurer of the defendant desired & requested the plaintiff to leave the same in the Office of defendant and this defendant not having said paper in her possession to her knowledge cannot produce the same,

And defendant denies that the plaintiff is entitled to judgment for said two notes & interest thereon or that she is in any way indebted to the plaintiff.

II

And for a further answer to said amended petition the defendant states, that prior to the dissolution of the said partnership of Koehler & Goldberg and some time in the year 1856 the said firm of Koehler and Goldberg endorsed and assigned to the defendant two certain promissory notes, one for the sum of four hundred and thirty seven & 96/100 dollars, made by F. H. Meisemann payable to the order of said firm and the other for the sum of two hundred dollars & nine cents made by one H. A. Rodemann payable to the order of said firm and deposited the same with the defendant as collateral security for the indebtedness of said firm then existing to this defendant; and the defendant states that said firm was then indeb=

ted to the defendant on account of notes & Bills discount-
ed for said firm to a considerable amount to wit; the
amount of about the sum of said two notes, and that de-
fendant held said notes to be collected and the proceeds
thereof applied to the payment of said indebtedness, and
said firm continued to be so indebted to the defendant
until after the dissolution of said firm the death
of said Henry Goldberg and the departure of said
Koepls for Europe and for some time thereafterwards, and
the defendant states, that sometime prior to the 29th day
of September 1856 the said firm was dissolved by the
death of said Henry Goldberg and that on that day
Elise Goldberg widow of said Henry was duly appointed
executrix of the estate of said Henry Goldberg, deceased
by letters testamentary of that date to her granted on
said estate by the St Louis Probate Court, that said ex-
ecutrix thereupon proceeding to include and did include
in her inventory of the estate of said deceased which
she was required by law to return to said Probate
Court the whole of the partnership estate goods and
chattels rights and credits of said late firm in the
presence of witnesses, and appraised at their value
according to the provisions of an act entitled "An
act respecting Executors and Administrators" ap-
proved 11 Dec 1855; and thereafterwards to wit; on the
23d day of December 1856 the said Executrix resigned
said administration, and her said letters were revoked
and the defendant files herewith a certified copy of
said letters inventory & proceedings of said Court.

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marked "Ex A" And the defendant further states that thereafterwards on the sixth day of January 1837 Charles Evelin was duly appointed administrator de bonis non with the will annexed of the said estate by letters of administration thereon to him granted of that date by the said St Louis Probate Court, and the said administrator thereupon took charge of the administration of said estate and proceeded to include and did include in the inventory which he was by law required to return to said Court, the whole of the partnership estate goods and chattels rights and credits of said late firm in the presence of witnesses and appraised at their value and on the said sixth day of January aforesaid gave further bond to the satisfaction of said probate Court before proceeding to administer upon said partnership property, conditioned that he would faithfully execute that trust with no unnecessary waste or expense and thereupon took the whole partnership estate goods and chattels rights and credits of said late firm into his own charge and possession, according to the provisions of the act aforesaid; and said administrator became thereby the sole person authorized by law to demand have and receive the partnership property and effects of the said late firm into his hands and possession, and to collect the debts due said late firm and to settle up and administer upon said partnership estate, And the defendant further says that within thirty days after letters testamentary had

been granted as aforesaid upon said estate of
20 Henry Goldberg deceased to said Elise Goldberg the
said Alpheus E Koehls departed for Europe and ceased
to be a resident of this State and did not afterwards be
come a resident of this State before the said 6th day of
January 1837, that the said Koehls surviving partner
of said late firm has never hitherto given the bond re
-quired by the act aforesaid nor undertaken the ad-
ministration of said partnership estate and affairs in
the manner required by said act, nor since the disso
-lution of said partnership by the death of said Goldberg
as aforesaid become by law entitled to demand have &
receive the possession of said partnership property and
effects nor to settle up and administer upon said
partnership estate; and that thereafterwards to wit;
on the seventh day of February 1837 the indebted-
-ness of said late firm to defendant for which said
notes were deposited and endorsed as collateral
security having been fully paid and satisfied, the
two notes above herein mentioned were on demand
made for the same by the said Charles Enslin
administrator as aforesaid delivered up to him;
of which said letters, inventory & bond of the said
Charles Enslin administrator and of the records
of the proceedings of said Probate Court in the
premises, a certified copy is herewith filed mark
-ed Ex B. And so having fully answered in
the premises, the defendant prays to be hence dis-
-charged with costs &c N. Holmes.

21 State of Missouri } ss John Cavender President
County of St Louis } of said Mutual Savings Institution, maketh oath and saith that the matters and things contained in the foregoing answer to said amended petition he believes to be true as therein stated. John Cavender

Sworn to before me this the 21st day of May 1858. O. W. Hicks, clk.

And afterwards the following further proceedings were had in this cause to wit;

March Term 1858. Wednesday June 2d 1858

Jury trial & Judgt for $638.05 Debt

Now at this day come the parties by their respective attorneys and thereupon come a jury to wit: Freman Barnum G. H. Schmidt, Tarlton Brewster, James H Turner, George T. Hardcastle, Bernard Pfeiffer James Patrick, Charles Ruth F. Stansberry John Warren R. L. Melville and Isaac Stout twelve good and lawful men who being duly elected tried and sworn the issues herein joined well and truly to try the trial progressed and being finished the jurors aforesaid upon their oath aforesaid, say they find for the plaintiff and assess his damages at the sum of Six hundred and thirty eight dollars and five cents; therefore it is considered by the Court that the plaintiff recover of the defendant the damages aforesaid as assessed and also his costs herein expended and have execution therefor.

And afterwards the following further proceedings

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were had in this cause to wit;

Tuesday June 15th 1858.

Motions for new trial & in arrest of Judgt Ovd.

The defendant's motions for a new trial and in arrest of Judgment, being heard and fully understood by the Court it is ordered that said motions severally be over-ruled.

And afterwards on the 17th day of June A D 1858 the following Bill of Exceptions was filed to wit;

Bill of Exceptions Testimony of Pettus

Be it remembered that on the trial of said cause a jury being empannelled and sworn the plaintiff called as a witness William G. Pettus who testified that in 1856 he was Secretary of the United States Insurance Company and knew the firm of Bredow & Shaffler on paper but not in any other way. Looks at a note (marked A) of which the following is a copy.

Note

$600.00 St Louis August 15th 1856

Sixty days after date we promise to pay to the order of Ourselves Six hundred x/100 dollars for value received, negotiable and payable without defalcation or discount. Kochls & Goldberg.

Endorsed Kochls & Goldberg. Frk Bruggerhof

Bredow & Schaffler Wm G Pettus Sdy

and says it was discounted by the United States Ins Company for the benefit of Kochls & Goldberg and the money paid to them. The note when due was protested, Bredow & Shaffler were endorsers on it, They came & settled it by giving a new note & taking up the old

Protested Sixty days Payment Oct 17th 1856 Jas W Clarke Notary Public

one. At that time Koehls had gone to Europe and Goldberg was dead. It was sometime after the note became due that they came & settled it as above, we threatened to sue & they came and gave additional security. The note was due in October 1857, and I suppose it was a month or two afterwards that the new note was given, It was renewed twice & finally protested & they took it up as indorsers for Koehls & Goldberg sometime in Dec 1856.

Testimony of Machwitz

Rudolph Machwitz, called & sworn for plaintiff testified, that he knew Koehls & Goldberg & knew their handwriting proves their handwriting as makers of a note of $500 in favor of Rudow & Shaffer & endorsed by them (note marked A) In 1856 Adolph Kohl was Secretary & Treasurer of the Mutual Savings Institution & did business for the institution in that capacity, knew his handwriting, certain notices shown him (Notice of dissolution marked B & C) were in the body in the handwriting of Kohl and the signatures were in the handwriting of Henry Goldberg & Adolphus E. Koehls. These Notices dated 27 Aug 1856 were read in evidence as follows.

Notice

Notice. The partnership heretofore existing between the undersigned, under the firm of Koehls & Goldberg has by mutual consent, and on account of sickness of Mr. Goldberg this day been dissolved. Either partner may use the name of the firm only in liquidating.

St Louis August 27th. 1856.

Adolphus E. Koehls
Henry Goldberg.

Anzeige.-

24 Die unter der Firma Koels und Goldberg bestandene Gesellschaftsverbindung der Unterzeichneten, ist mit dem heutigen Tage nach freundschaftlichem Uebereinkommen wegen der Krankheit von Goldberg, aufgelöst. Die Liquidation wird durch beide Partners geführt, und der Name der Firma kann nur in Liquidation geführt werden. – Adolph E. Koels. – Henry Goldberg.

Notice of Dissolution

After the dissolution of their firm Koels went to Europe on the 17th & 18th Oct 1856. He left a power of attorney dated the 16th Oct 1856 to me which is here shown him & he proves the signature of A. E. Koels thereto; which power is offered in evidence as follows.

Power of Attorney

Know all men by these presents that I Alphonse E Koels of the County of St Louis Missouri have made constituted and appointed as I do by these my presents make constitute and appoint Rudolph Ackerik of St. Louis County my true and lawful attorney for me and in my name to ask demand receive and collect any and all rents debts dues and demands whatsoever now due me or hereafter to become due to me, to endorse for me and in my name, and as far as I have the right thereto, for the late firm of Koels and Goldberg any note when such endorsement shall be necessary for its liquidation or its negotiability; to make execute and deliver any covenant and agreement; to sign seal and deliver any bond conditioned for the payment of money or for the performance of any act, to sell lease or incumber by mortgage or other disposition to make of any or all my estate real personal

or mixed, for cash or credit and for me and in my name make execute and deliver all necessary releases acquittances deeds, or other instruments of writing sealed or unsealed necessary to give effect to any of the powers herein contained or conferred on my said attorney to prosecute or defend as the case may be; all suits to which I may be a party as plaintiff or defendant or in the event of which I may be in any manner interested: to institute such suits as my said attorney may deem advisable and proper, and take all steps necessary for or incident to either their commencement or their prosecution; to this end employing counsel on such terms as he may stipulate with them. I furthermore authorize my said attorney to compromise or compound any debt claim or demand whatever due to me or by me upon such terms and conditions as my said attorney may deem proper; hereby empowering him to appoint attorneys one or more under him delegating to him or them such powers as he may deem necessary and under such restrictions as he may deem advisable, and at his pleasure to revoke and cancel any such delegation of his authority and because it is my intention by this power of attorney to substitute my said attorney in my lieu and place in such manner, that in regard to the administration of my affairs and the affairs of the late firm of Koch & Goldberg, he may exercise all the authority which I myself could exercise were I personally present, I hereby generally

invest him with every power necessary to carry out this my intention whether the same be herein specifically set forth or not hereby engaging and covenanting with all whom it may concern to ratify and confirm whatever acts my said attorney may do and perform in regard to my affairs by virtue of these presents without regard to any imperfection or irregularity of form in the execution of the power hereby created, and I do hereby revoke all powers of attorney which I may have heretofore executed. In witness whereof I have hereunto set my hand and affixed my seal, this 16th day of October 1854

Alphons E. Koels. Seal

State of Missouri }
County of St Louis } ss Personally appeared before me James Lansing a notary Public within and for the County aforesaid, Alphons E Koels, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as a party thereto and acknowledged the same to be his act and deed for the purposes therein mentioned

Witness my hand and Notarial seal hereto affixed this 16th day of October 1854

Seal

James Lansing Notary Public St Louis County Mo.

State of Missouri }
County of St Louis } I the undersigned Recorder for said County certify that the foregoing Deed was filed for record in my Office

December 1st 1854 & is truly recorded in Book No 183 page 124.

Witness my hand and official seal the date aforesaid. Recorder.

(Seal)

to the reading of which the defendant by her counsel objected for incompetency and want of power to make the same; his objection was overruled & an exception taken, Witness proceeded under this power to settle up the affairs of the partnership of Koch and Goldberg and gave to Bredon & Shaffer an order on the Mutual Savings Institution for the two notes in controversy in writing & delivered it to Bredon & took a receipt for it, The paper shown him marked "D" is nearly the same as that which he gave to Bredon except that, as the $100 note was not taken up that day another was drawn up a day or two after by Mr Gardner saying that the order and assignment were given to Bredon & Shaffer to indemnify them as endorsers against loss on the said note of Koch & Goldberg this order was given at the time when Messrs Bredon & Shaffer took up that note from the United States Ins Co. This order was afterwards delivered to Mr Nohl I heard Nohl speak about it, he asked me if I had any authority to give such an order & requested me to hand in my power of attorney to the Institution for examination, which I did handed it to Mr Nohl: he said he wanted to show it to their lawyer to see whether it was sufficient he kept it

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2 or 3 days handed it back & said Koels was required by law to give bond & security for the partnership assets before he could give such a power, He acknowledged at that time that the institution held the notes sued for in their hands.

X examd.

The order was taken to the institution & given to Nohl about the 12 or 13th Decr 1856, It might have been a few days before that time. At that time Nohl told me that the collateral security was cleared off. I gave this order to Bredow & Shaffler to relieve them of their liabilities as endorsers on the $100 to the U. S. Ins Co for benefit of Koels and Goldberg. It was given a short time after this note became due, cant say exactly how long.

R.O. Examined. Nohl told me at the time the order was handed him there was a balance in the hands of Deft in favor of Koels & Goldberg amounting to $184.00 & that the notes in question were no longer held by Deft as collateral security.

Testimony of Eiserman

Mr Eiserman called and sworn for plaintiff testified that he was bookkeeper of Bredow & Shaffler in 1856 & went with Mr Bredow to the office of Defendant & delivered to Mr Nohl Treasurer the order spoken of in Dec 1856 cant say certainly but think it was on the 2d day of Dec '56 Bredow asked Nohl to give him the notes Nohl read the order & handed the paper to Mr Cavender Prest who also read it & he refused to give

up the notes, They desired to show the order to their lawyer and we left it with them, A few days afterwards said he would not give them up, asked for the order back, did not get it & have never seen it since, The purport of the order was to deliver two notes one of a man at Peoria, Christian Shaffler & Theo Bredow were partners at that time & the partnership was dissolved 15 Jany 1857.

Proves signature of Bredow & Shaffler to a written agreement of dissolution, marked ; Theodore Bredow paid the $100 note to the U. S. Ins Co.

Testimony of Webster

Mr Webster called & sworn for Pltff testified that the notice of dissolution, was printed in the Republican newspaper on the 28 aug 1856 & had six insertions therein

Do of Preissner

Mr Preissner called & sworn for Pltff proved the notice was printed in the Anzeiger des Westens newspaper on the 28 aug 1856 Henry Goldberg died about that time a little afterwards.

Testimony of Gardner

S. H. Gardner Esq called for pltff testified that he drew up the order above spoken of and that the paper marked D was a copy of the one delivered to Bredow & Shaffler & spoken of by McCaskirtz except that instead of being expressed for the payment of a debt of Koehler & Goldberg to them it was expressed that the two notes mentioned were assigned to G & S. for the purpose of securing them against their liability on the $100 note on which they were endorsers, The paper marked D was then read

30

Paper Marked "D"

offered in evidence & read as follows.

Now and for consideration of One Dollar to me in hand paid by Bredow and Schaffler of the City of St Louis and for other valuable considerations thereunto moving I Stephen E Koels of the late firm of Koels and Goldberg do hereby for my self & for the said firm of Koels & Goldberg and for the purpose of paying a debt of the said firm of Koels & Goldberg to said Bredow & Schaffler amounting to six hundred dollars and interest protest and damages, sell, assign, transfer set over & convey to said Bredow and Schaffler; the following two notes made payable to Koels & Goldberg viz; One note for the sum of four hundred & thirty seven 96/100 dollars made by J. H. Heidmann of Peoria Illinois, and the other for the sum of two hundred 07/100 dollars made by H. O. Bodemann of Muscatine Iowa. Both of which said notes have been deposited by me in the Mutual Savings Institution in the City of St Louis for collection and I do hereby authorize and empower the said Bredow & Schaffler to demand & receive of the said Mutual Savings Institution the said two notes or the proceeds of the same if they have been or should hereafter be collected by said Mutual Savings Institution and in my name but for their only use to receipt for the same.

In Witness whereof I have hereunto set my hand and seal this first day of December Eighteen hundred fifty six.

31 The words ("for myself & for the said firm of Koels & Goldberg interlined before execution,)" A. E. Koels (seal) by R. Mackwitz his attorney in fact

to the reading of which defendant objected for incompetency & the objection being overruled an exception was taken. The other order was written by witness on the 1st or 2d of Decr 1856.

Plaintiff offers & reads in evidence a written agreement of ~~[illegible]~~ dissolution of partnership ~~property~~ of Bredow & Shaffler as follows.

agreement of dissolution of Partnership of Bredow & Shaffler,

Whereas the copartnership heretofore existing between Theodore Bredow and Christian Schaffler under the style and firm of Bredow & Schaffler was dissolved on the thirty first day of December AD 1856 by mutual consent, and whereas an Inventory was made by the said partners of the entire stock of goods wares and merchandise and store fixtures and furniture on hand and in transitu on the said 31st day of January Eighteen hundred and fifty six by which Inventory it appears that the total value of the said goods wares &c &c above referred to is the sum of Eleven thousand nine hundred & Ninety One 13/100 ($11991.13 dollars, which Inventory is hereto annexed marked Exhibit "A" as part of this article of agreement and whereas a balance sheet has been made by the said partners showing the condition of their affairs on the said 31st day of December 1856

32.

Which balance sheet is also hereto annexed marked exhibit B. Now with a view and for the purpose of closing up the business of the said firm the said Christian Schaffler in consideration of the sum of Two thousand Nine hundred six 73/100 dollars doth hereby sell convey assign and deliver to the said Theodore Bredow all his (said Schaffler's) share and interest of and in the entire stock of goods wares merchandise, fixtures, furniture and effects of the said firm whether in Store in their Store House on the North Side of Pine Street between Main and Second streets in the City of St Louis or elsewhere or in transitu, and also his share and interest in all the debts claims and demands due or belonging to the said firm whether the same consist in Note bonds bills book accounts or otherwise also all his interest in the account books of said firm, and also his the Schaffler's interest in the lease of the said Store House in which the late firm carried on business. And the said Theodore Bredow hereby agrees and covenants with the said Schaffler to pay faithfully all the debts and liabilities of the said firm as the same appear in the said balance sheet hereto annexed. The parties hereto contract and further agree, that if it shall be hereafter ascertained that there are any debts or liabilities of said firm of Bredow & Schaffler which do not appear in their books and in the said Balance Sheet, that any such debt or debts or liability or liabilities if created by the said Bredow shall be paid by him, and

33 if created by the said Schaffler the same shall be paid by him the said Schaffler.
Witness our hands and seals this fifteenth day of January A D 1857.
In presence of
G. W. Dreyer.

Theodore Bredow (Seal)
C Schaffler (Seal)

The words Eleven thousand Nine hundred & Ninety One 13/100 ($11.991 13/100) interlined on the first page in lieu of the words "Twelve thousand One hundred & forty 68/100 before execution hereof,
to the reading of which defendant objected for incompetency & the objection being overruled an exception was taken, Here plaintiff closed his case,

Defence.

Testimony of Schenck

John Schenck called & sworn for defendant testified that in 1856 august to January & afterwards he was bookkeeper of the defendant, that in about the month of August couldn't say exactly when Koehls & Goldberg deposited with defendant two notes one of J H Heidemann for $437.96 & one of H. V. Bodeman for $200.09 Koehls & Goldberg were at that time indebted to the defendant on notes & Bills discounted and these two notes were deposited as collateral security for that indebtedness The Institution tried to collect them, sent them to Peoria where the makers lived for collection, but did not collect them, they were never paid to the institution, where not paid when due. Afterwards about the 7th of February 1857. Charles Enslin administrator of Henry Goldberg called for

them. The paper (marked Deft No 1) is shown witness & he says it is in the handwriting of & signed by Charles Enslin Adm^r & was presented to defendant on the 7th Febry 1857. The Institution gave Enslin orders in writing on the persons to whom the notes had been sent at Peoria for collection for the notes to be delivered to him. Looks at the copy book of the Deft and says it contains copies of these orders, the two notes were given up to Mr Enslin on those orders. Dont remember whether the indebtedness of Koehler & Goldberg to the defendant had been paid off at the time when Preyer & Schaffler called for these two notes or not. Charles Enslin told me he got the notes and he brought the Institution the Bank Book of Koehler & Goldberg in which the deposit of the notes had been entered when deposited and the entries therein were thereupon cancelled.

Testimony of Cavender

John Cavender called by the defendant & being sworn on his voir dire says he is a Stockholder in the Mutual Savings Institution & President of the Corporation & is interested in this suit as such stockholder but not otherwise Plaintiff objects to his being sworn as a witness for the reasons disclosed & his objection is sustained & the witness excluded, to which decision of the Court the defendant excepted.

Paper Deft No 1

The defendant then offered & read in evidence the paper (marked Deft No 1) as follows;

To the Mutual Savings Institution
St Louis Mo.

35 You are hereby notified that two Notes deposited by Koehls & Goldberg with you one made by H Heidemann of Peoria Illinois for four hundred and thirty seven dollars and ninety six cents and the other made by H V Bodeman of Muscatine Iowa for two hundred dollars and nine cents belong to the assets of the late firm of Koehls & Goldberg and that I as administrator de Bonis non of Henry Goldberg having in charge the estate of Koehls & Goldberg and partnership property thereof am alone entitled to said notes and to collect the same & now hereby require you to deliver the same to me.

C. Enslin Admr

St Louis February 7th 1857. Delivered in presence of R Enslin.

Defendant then read in evidence the Ex A filed with his answer as follows;

Defts Exhibit "A" County of St Louis ss the State of Missouri. To all persons to whom these Presents shall come Greeting. Know ye that the last will of Henry Goldberg deceased hath in due form of law been exhibited proved and recorded in the Office of the Judge of the Probate Court for St Louis County a copy of which is hereunto annexed, and in as much as it appears that Elise Goldberg has been appointed Executrix in and by the said last will to execute the same Therefore these Letters Testamentary on the estate of said deceased are granted to Elise Goldberg the Executrix in said will named and to the end that the property of the testator may be preserved for those who shall appear to have a legal right or interest therein

and that the said last will may be executed according to the request of the testator we do hereby authorize her the said Elise Goldberg as such executrix to collect and secure all and singular the goods and chattels rights and credits which were of the said Henry Goldberg at the time of his death in whosoever possession same may be found and to perform and fulfil all such duties as may be imposed on her by said will so far as there shall be property and the law charge her and in ~~the premises~~ general to do and perform all other things which now are or hereafter may be required of her by law. In Testimony whereof I Peter Ferguson Judge of the Probate Court in and for the County of St Louis hereto sign my name and affix the seal of said Court at Office this twenty ninth day of September A.D. 1864. Peter Ferguson Judge of Probate Recorded 29th September 1864 William F. Ferguson Clerk

Inventory of all the Real and Personal Estate of Henry Goldberg late of the County of St Louis deceased, describing the quantity situation and title of the real estate, the book and papers the debts due to the deceased, the names of the debtors, the date of the contract the amount of interest due, and the rate of interest thereon made by Elise Goldberg Executrix of said deceased and Werner Zweger and ___ witnesses appointed to aid in making the same St Louis September 30th 1864

Household Furniture.

One Card table, One stand do six cane chairs, One Rocking chair One cane rocking Chair One sofa

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thirty five yards carpet, One Looking glass, One lamp and mantle piece ornaments, One study lamp One stove & pipe One Yankee Clock One dining table One lot of bottles and jars One old ba~ Carpet One office chair One Bureau One work stand One wash stand and foot stool One Bureau Common One Clothpress One wash stand Two common trunks One old bedstead One broken cot, one cloth Basket.

Kitchen & Table Furniture.

One cooking stove, One kitchen safe, One Kitchen table One chair one shelf One ice box, one old wash tub & board One lot of cups & saucers in cupboard One set of Castors One lot of tumblers & wine glasses Two waiters One soap tureen One lot of tin ware & empty Demijohns One set of common dinnerware.

Books & Papers.

A list of assets and liabilities of the firm of Koehler & Goldberg, One account Book marked Koehler and Goldberg Saint Louis Missouri One lot private letter accounts and notes due to the late firm of Koehler & Goldberg of which firm Henry Goldberg deceased was a member said firm and partnership, between Henry Goldberg deceased and A E Koehler having been dissolved about six weeks before the death of Henry Goldberg deceased, said accounts and notes and other assets of said late firm being now in the possession of Alphonso E Koehler

Accounts

J Henning Davenport Iowa $158.86

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H. Koehler	Fort Madison "	422.04
P. Kleutsch	Wyskatine "	86.79
F. Schaffner	Galena, Ills	136.40
E. Luiders	Camanche Iowa	204.36
J. Fox	Peru Illinois	205.15
William Kelly	Independence Mo	250.00
T. B. Todd	" "	300.00
Dr Klimschmidt	Freeport Ills	39.85
H. K. Northern	Dubuque Iowa	9.50
H. Schumphase	Port Byron Iowa	70.30
H. Wagner	Vienna "	343.46
H. Freyse	Galena Illinois	449.45
J. Huffman	Fort Ripley Iowa	281.10
J. Roller	St Louis	8.25
Wolf & Papenhusen	Washington Mo	8.80
J. Hugel	Fort Madison Iowa	78.75
Henry Goldberg	"	1437.60
Bredow & Schaffler	St Louis	47.43
A. Fisher	"	30.00
F. Blume	Indianapolis Iowa	29.30
Lange	St Louis	10.00
Reifenheim		24.60
		3631.87
Sacks (left with wife in Jefferson City)		119.00
	Carried Over	$3750.87
	Carried Over	$3750.87

Notes and drafts left as collateral security with Mutual Savings Institution of St Louis.

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Note of	H. Kohn	$44.96
" "	J. B. Jacks	25 00
" "	Same	25 00
" "	Same	25 00
" "	Same	25 00
" "	Same	25 00
" "	John Kefeling	95.13
" "	Same	94.00
" "	Elbring & Bro	44.28
" "	C. W. Dietsch	79 82
" "	J. H. Heidemann	437.96
" "	Bodmann	200.09

Notes and Drafts deposited for collection with Mutual Savings Institution

One Draft on	Hoffmann	$114.31
" "	on Miller	77.93
" "	on Beyerle	50.73
One Note of	Nachin	43 00
		$5158.08

We the undersigned witnesses appointed by the Judge of the Probate Court of the County of St Louis to accompany and aid the Executrix in opening and examining the papers and money of Henry Goldberg deceased and in making an inventory of them assembled at the late residence of said deceased on the thirtieth day of September 1874 and there and there performed the duty assigned to ~~them~~ us and certify the foregoing to be a full and complete inventory of the same, Werner Weyer. A. Goldsmit.

State of Missouri County of St Louis } ss Be it remembered that on this 29th day of November in the year of Our Lord One thousand Eight hundred and fifty six before me James K Knight a Notary Public within and for the County aforesaid personally appeared Elsie Goldberg Executrix of Henry Goldberg late of the County of St Louis deceased, who being by me duly sworn on her oath says that the foregoing is a full inventory and description of all the money goods chattels and estate real and personal, books, papers, evidences of debt and of title of the deceased and of all debts due or becoming due so far as she can ascertain them, except the property reserved as the absolute property of the widow, and that she is not indebted or bound in any contract to the deceased at the time of his death except as stated in the inventory. Elsie Goldberg.

Sworn to and Subscribed before me at the County aforesaid this 29th day of November 1856.

L.S. J. K. Knight Notary Public

State of Missouri }
County of Saint Louis } ss At a term of the Probate Court begun and held at the City of Saint Louis within and for the County of Saint Louis on the first Monday being the first day of December in the Year of Our Lord One thousand eight hundred and fifty six are present Peter Ferguson Judge of said Court, William T. Ferguson Clerk and William C. Smith Messenger of the County of Saint Louis. Court adjourned from date to day until Tuesday the 23d December 1856. Tuesday 23d De

41 cember 1854 Court met pursuant to adjournment present same Judge,

Elise Goldberg Executrix } Resignation & Settlement
of Henry Goldberg deceased } Elise Goldberg Executrix of Henry Goldberg appears and states that she is not able to give the security required by law to settle the copartnership affairs of the late firm of Koehls & Goldberg and prays the Court to be permitted to resign which she is allowed to do: on which she exhibits her account for settlement of her administration upto this time, whereupon the Court examining and finds that assets came to her hands to the amount of ninety four dollars dollars thirty four cents and that she is entitled by credit to the sum of Ninety four dollars and thirty four cents which balances her account,

State of Missouri } I William F. Ferguson Clerk
County of St Louis } of the Probate Court of the County of St Louis certify that the foregoing is a true copy of the letters Testamentary granted to Elise Goldberg on the Estate of Henry Goldberg deceased and a true copy of the proceeding of said Court on the settlement and resignation of said Elise Goldberg as such Executrix ~~aforesaid~~ as the same now remains of record in the Office of the Judge of Probate ~~Court~~ of the County of St Louis and a true copy of the inventory of the Estate of said Henry Goldberg as made by Elise Goldberg as the same now remains on file in the office of the Judge aforesaid.

Tdt
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In testimony whereof I hereto set my hand and (Seal) affix the seal of the Probate Court of the County of St Louis at Office in said County this Nineteenth day of March in the year of Our Lord One thousand Eight hundred and fifty eight. William F. Ferguson
Clerk

And also the Exhibit "B" of her answer as follows

Defts Exhibit "B"

County of St Louis ss
The State of Missouri

To all persons to whom these Presents shall come Greeting Know ye, that the last Will of Henry Goldberg deceased hath in due form of law been exhibited, proved and recorded in the Office of the Judge of the Probate Court for St Louis County, a copy of which is hereunto annexed and inasmuch as it appears that Elise Goldberg has been appointed Executrix in and by the said last will to execute the same who has been allowed to resign her appointment as executrix without having fully administered the Estate of said deceased, now these letters of administration de Bonis non with the will annexed on said Estate of said Henry Goldberg are granted to Charles Enslin, and to the end that the property of the testator may be preserved for those who shall appear to have a legal right or interest therein, and that the said last will may be executed according to the request of the testator we do hereby authorize him the said Charles Enslin as such administration to collect and secure all and singular the goods and chattels rights and credits, which were of the

said Henry Goldberg, at the time of his death remaining unadministered in whosoever possession the same may be found and to perform and fulfil all such duties as may be enjoined on him by said will, so far as there shall be property and the law charge him and in general to do and perform all other things which now are or hereafter may be required of him by law, In testimony whereof I Peter Ferguson Judge of the Probate Court in and for the County of St Louis hereto sign my name and affix the seal of said Court at Office this Sixth day of January A D 1857 Peter Ferguson Judge of Probate.

(L S)

State of Missouri } I William F. Ferguson
County of St Louis } Clerk of the Probate Court for the County of St Louis certify that the foregoing is a true copy of the Letters of administration de bonis non with the will annexed granted to Charles Emaly on the estate of Henry Goldberg deceased as the same now remains on record at my Office

(Seal) In testimony whereof I hereto set my hand and affix the seal of the Probate Court of the County aforesaid at Office in said County this Nineteenth day of March in the year of our Lord 1858. William F. Ferguson Clerk

Inventory of all the Real and Personal Estate of Henry Goldberg late of the County of St Louis deceased describing the quantity situation and title of the real estate the books and papers the

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debts due or to become due to the deceased, the names of the debtors, the date of the contract the amount of interest due and the rate of interest thereon made by Charles Enslin Administrator of said deceased and Frederick Wm. Dieberiger and Emil Hornstein witnesses appointed to aid in making the same. St Louis September 26th 1837 being property belonging to the firm of Koels & Goldberg St Louis Mo One half of which Henry Goldberg is interested in Cash at the Mutual Savings Institution St Louis $ 148.22

Book accounts		
H Kozler Fort Madison Iowa	422	04
F Schaffner Galena Ills (in admr)	136	40
Ed Linden Camanche Iowa	204	36
Pk Kleinschmidt Freeport Ills	39	85
H Von Werthern Dubuque Iowa	9	50
H Schmphose Port Byron Do	70	30
H Freyse Galena (in admr)	449	45
H Wagner Wenona Mum Terr	343	46
G Hamptmann Fort Ripley Iowa	221	10
J Rotter St Louis	8	25
Wolff & Poppenhusen Washington Mo)	8	80
J Hugel Fort Madison Iowa	78	75
H Goldberg Do "	1437	60
A Fischer St Louis Mo	30	00
Keifenheim Muscatine Iowa	24	60
L Betke Dubuque "	37	81
Doher Peoria Ills	59	22
Bredow & Schaffler St Louis Mo	47	43

45	Hintermeister & Dolde Muscatine Iowa		9	12
	John Boblitz Do "		75	12
	Peter Reuling Do "		15	72
	John Arola Do "		132	35
	Chas Kunnecke Warsaw Ills		37	55
	F. Holtzel & Co Lyons Iowa		30	00
	H. V. Bodemann Muscatine "		200	09
	Chs Sarder Jackson Mo		128	—
(3)	Promissory Notes			
	I Fox note dated May 3/1854 payb 40 days after date $100 00 Interest on same from 25 June 1854 to $15 18 January 1857 2 years 6 mos 11 days at the rate of six per cent per annum		115	18
	Carry Over		4520	27
	Amount Carried forward		4520	27
Note	J H Heering Davenport Iowa dated February 15 1856 payable 40 days after date $75— Interest on same from March 30/1856 to January 6/1857 being 9 Mos & 7 ds at the rate of six per cent per annum	3.46	78	46
Note	J H Hoering & Robert Hinne Davenport dated May 19/1856 payable 30 days after date $85— Interest on same from June 20/1856 to January 6/1857 6 mos & 15 ds at the rate of six per cent per annum	2.76	87	76
Note	B. W. Todd Independence Mo dated June 27 1854 payable 90 days after date	299.65		
	Interest on same from Septbr 28/1854 to January 6th 1857 2 years 3 months & 8 days at the rate of six per cent per annum	40.90	340	55
Due Bill	Francis Blum Indianapolis Indiana dated November 29/1854.	29.30		

46	Interest on same from November 29/1854 to January 6/1857 2 years 1 Month & 7 days at the rate of six per cent per annum.	3.45	32	95
Note	B Sacks Jefferson City Mo dated April 22/1854 payable two months after date	25—		
	Interest on same from June 25th/1854 to January 6/1857 6 Months & 11 days at the rate of six per cent per annum	80	25	80
Note	B Sack Jefferson City Mo dated April 22/1854 payable 3 Months after date	25—		
	Interest on same from July 25th/1854 to January 1857. 5 Months & 10 days at the rate of six per cent per annum	46	25	46
Note	B Sacks Jefferson City Mo dated April 22/1854 payable 4 Months after date	25—		
	Interest on same from August 25/1854 to January 6/1857 4 Months & 11 days at the rate of six per cent per annum	54	25	54
Note	B Sacks Jefferson City Mo dated April 22/1854 payable 5 Months after date	25.00		
	Interest on same from September 25th/1854 to January 6/1857 3 Months & 11 days at the rate of six per cent per annum	42	25	42
Note	B Sacks Jefferson City Mo dated April 22/1854 payable 6 Months after date	25,00		
	Interest on same from October 25th/1854 to January 6/1857 2 months & 11 days at the rate of six per cent per annum	30	25	30
Note	B Sacks Jefferson City Mo dated April 22/1854 payable 7 Months after date	25,00		
	Interest on same from November 25th/1854 to January 6/1857 41 days at the rate of six per cent per annum	17	25	17
Note	B Sacks Jefferson City Mo dated April 22/1854 payable 8 months after date	25—		

	Interest on same from		
	Amount carried over		$5503. 71
	Amount carried over	25 cts	5503. 71
	December 25/1856 to January 1/1857 11 days at the rate of six per cent per annum	,05	25 05
Note	B Sachs Jefferson City Mo dated April 22/1856 payable 9 Months after date due January 25/1857		25 —
Note	B Sachs Jefferson City Mo dated April 22/1856 payable 10 Months after date due January 25/1857		25 —
Note	P Klentsch Muscatine Iowa dated November 5/1855 payable 3 months after date	86.79	
	Interest on same from February 8th 1856 to January 1/1857 10 Months & 28 days at the rate of six per cent per annum	4.70	91 49
Note	John Kepelring Herman Mo dated April 20th 1856 payable 2 Months after date	$94 —	
	Less amount endorsed on same	20 —	
		74. —	
	Interest on same from June 25/1856 to January 1 1857 6 Months & 11 days at the rate of six per cent per annum	2.36	7 16 36
Note	John Kepelring Herman Mo dated April 22/1856 payable 3 months after date	95,15	
	Interest on same from July 25/1856 to January 1. 1857 5 Months & 11 days at the rate of six per cent per annum	2.53	97 66
	Amount Carried forward		$5844 27
	Amount brot down		$5844 27
Note	J H Hoddeman Peoria Ills due October 4/1856 (in hands of the Central Bank Peoria for collection) Interest on same from October 4/1856 to January 1/1857 3 Month & 2 days at the rate of ten per cent per annum	437.94 / 11,20	449. 16

48. Note (brot from fourth page)

William Kelly (Independence Mo) (in hands of Harvey & Buchanan for collection as per receipt) date February 12/1854 payable 60 days after date 250.-

Interest on same from April 16/1854 to January 6/1857 = 2 years 8 Mos & 20 days at the rate of six per cent per annum. 40.83 290.83

6293.43

No property of any description belonging to Henry Goldberg individually has come to my knowledge or to my hands

We the undersigned witnesses appointed by the Judge of the Probate Court of the County of St Louis to accompany and aid the administrator in opening and examining the papers and money of Henry Goldberg late of St Louis County deceased and in making an inventory of them assembled on the twenty sixth day of September 1857 and then and there performed the duty assigned to us and certify the foregoing to be a full and complete inventory of the same. F W Biebinger.

E Hornstein.

State of Missouri County of St Louis Sct Be it remembered that on this twenty sixth day of September in the year of our Lord One thousand Eight hundred and fifty seven before me Robert Henning a Notary Public within and for the County aforesaid, personally appeared Charles Euslin Administrator of Henry Goldberg late of the County of St Louis deceased who being by me duly sworn on his oath says that the foregoing is a full inventory and description of all the money goods chattels and estate real and personal books papers evidences

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of debt and of title of the deceased, and of all debts due or becoming due so far as he can ascertain them except the property reserved as the absolute property of the widow; and that he is not indebted or bound in any contract to the deceased at the time of his death except as stated in the inventory. Charles Enslin.
Sworn to and Subscribed before me at the County aforesaid this twenty sixth day of September 1857
(L.S.) Robert Henning Notary Public.

Know all men by these presents that I Charles Enslin Administrator of the estate of Henry Goldberg deceased and we Robert Barth and Edward Eggers as securities are held and firmly bound unto the State of Missouri in the full and just sum of Ten thousand dollars to the payment whereof well and truly to be made we bind ourselves our heirs executors and administrators jointly and severally firmly by these presents sealed with our seals and dated at the County of St Louis this sixth day of January 1857
The condition of the above ~~obligation~~ Bond is that if Charles Enslin administrator de bonis non with the will annexed of Henry Goldberg deceased shall well and faithfully execute the trust of closing the affairs of the late copartnership of Koch and Goldberg which was composed of Alphonse E Koch and Henry Goldberg, and with no unnecessary waste or expense then the above bond to be void, otherwise to remain in full force. Charles Enslin (Seal)
Robert Barth (Seal) Edward Eggers (Seal)

Recorded 6th January 1857 William F. Ferguson clerk

State of Missouri }
County of St Louis } ss. I William F. Ferguson
Clerk of the Probate Court of the County of Saint Louis, certify that the foregoing is a true copy of the Inventory of the estate of Henry Goldberg deceased as made by Charles Enslin and the same now remains of file in the Office of the Judge of the Probate Court of the County of St Louis and a true copy of the bond as given by said Charles Enslin administrator de bonis non of said Henry Goldberg as the same now remains of record in the Office of the Judge aforesaid.

Seal } In testimony whereof I hereto set my hand and affix the seal of the Probate Court of the County of St Louis at Office in said County this Nineteenth day of March in the year of our Lord One thousand eight hundred and fifty eight

William F. Ferguson Clerk

Here defendant closed & the above was all the evidence in the case, Whereupon the plaintiff asked the following instructions which were given by the Court,

Plaintiffs Instruction given

If the jury find from the evidence that the firm of Koels & Goldberg was dissolved by mutual consent on or about the 28th of August 1854 that by the terms of the dissolution each partner was authorized to use the name of the firm in liquidation, That on or about the 2d day of December 1854 Koels, one of said firm by his attorney in fact assigned and transferred

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the two promissory notes mentioned and described in the petition to the firm of Predow & Schaffler for the purpose of securing & holding them harmless from the payment of the note for $100.00 mentioned in the petition and that said last named note was endorsed by said Predow & Schaffler solely for the accomodation & benefit of the said Koels & Goldberg and that said Predow & Schaffler did take up and pay said note of $100, or then the said notes of Podeman & Heidemann became by said transfer the property of the said Predow & Schaffler; and if the jury further find that on or about the 2d day of December 1861 the defendant was notified of the said assignment and transfer of said notes to said Predow & Schaffler and that Schaffler afterwards assigned & transferred his interest in the said notes to plaintiff. And that the Defendant has ever since the said transfer to said Predow & Schaffler neglected and refused to deliver the said notes or the proceeds thereof to said Predow & Schaffler or to plaintiff after demand made for the same of Deft then Pltff is entitled to recover against defendant the amount of said two notes and the jury should find accordingly; unless the jury further find that the notes were deposited with defendant to secure an indebtedness of the firm of Koels & Goldberg to defendant, and that such indebtedness was still unpaid at the time the notes were demanded by Predow & Schaffler, in this case the jury will find for the defendant.

To the giving of which the defendant accepted.

52 And thereupon the defendant asked the following instructions which were refused by the Court.

Defts Instructions Refused.

1. If the jury believe from the evidence that the two notes in question were deposited with defendant by the firm of Koels & Goldberg prior to the dissolution of said firm for collection such as collateral security for an indebtedness of said firm to the defendant then existing and unpaid and that the said Henry Goldberg died before the power of attorney from said Alpheus E. Koels to said Rudolph Mackwitz was executed and that Charles Enslin, as administrator of the estate of said Henry Goldberg deceased before proceeding to administer upon said partnership property gave further bond to the State of Missouri to the satisfaction of the St Louis Probate Court conditioned that he would faithfully execute that trust and with no unnecessary waste or expense, and that said two notes were thereafterwards on demand of said administrator delivered up to him they will find for the defendant.

2 If the jury believe from the evidence that the two notes in question were deposited with defendant by said firm of Koels & Goldberg prior to the dissolution of said firm for collection, and that said Henry Goldberg died before said power of attorney from said Koels to ~~plaintiff~~ said Rudolph Mackwitz was executed; that said Alpheus E Koels ceased to be a resident of this State, and never gave bond as surviving partner to the State of Missouri, conditioned

53 that he would use due diligence and fidelity in closing the affairs of said late copartnership; and that Charles Enslin as administrator of the estate of said Henry Goldberg deceased before proceeding to administer upon said partnership property gave further bond to the State of Missouri to the satisfaction of the St Louis Probate Court conditioned that he would faithfully execute that trust and with no unnecessary waste or expense, and that said two notes were thereafterwards on demand of said administrator delivered up to him, they will find for the defendants.

Refused.

3 If the jury believe from the evidence that the two notes in question were deposited with defendants by the firm of Koehl & Goldberg prior to the dissolution of said firm for collection and as collateral security for an indebtedness then existing from said firm to the defendants, and that the power of attorney from Alphens. E. Koehl to said Rudolph Mackwitz given in evidence by the plaintiff was executed after the death of said Henry Goldberg, they will find for the defendant unless they also believe that the said Koehl, before he ceased to be a resident of this State had given bond as surviving partner to the State of Missouri conditioned that he would use due diligence and fidelity in closing the affairs of said late copartnership

Refused.

4 If the jury believe from the evidence that the two notes in question were deposited with defendant by the firm of Koehl & Goldberg prior to the dissolution

54 of said firm for collection and as collateral security for
an indebtedness then existing from said firm to said
Refused defendant, and that the power of attorney from said
Koehls to said Rudolph Mackwitz given in evidence
by plaintiff was executed after the death of said
Goldberg they will find for the defendant.

5, If the jury believe from the evidence that the two notes
in question were deposited with defendant by said firm of Koehls &
Goldberg for collection and as collateral security for
Refused an indebtedness then existing from said firm to said
defendant for moneys loaned and advanced they
will find for the defendant unless they are also
satisfied from the evidence that at the time when
said Bredow & Shaffler demanded said notes of
the defendant the entire amount of said indebtedness
had been paid off and extinguished.

6 If the jury believe from the evidence that at the time
when said two notes were demanded of the defendant
Refused. by said Bredow & Shaffler the said notes had not been
collected by the defendant the plaintiff can only re-
cover what said notes are proved to have been then
worth.

to the refusal of which instructions the defendant ex-
cepted. Whereupon a verdict was rendered for the
plaintiff.

And thereafterwards on the next day the defendant
filed her motion in arrest of judgment as follows;
to wit;

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Mo in arrest of Judgt.

And now at this day comes the said defendant and moves the Court here to arrest the judgment in said cause for the reason,

1st That the facts stated in the plaintiffs amended petition are not sufficient in law to constitute a cause of action against said defendant

2d That the Court erred in overruling defendants demurrer to the plaintiffs petition.

3d That there is manifest error in the record and proceedings in said cause. A Holmes atty for Deft.

which said motion, thereafterwards being fully heard was overruled by the Court to which decision overruling said motion the defendant excepted.

And upon the next day after the day of trial as aforesaid the defendant filed her motion for a new trial of said cause, as follows to wit;

Mo for new trial

And now at this day comes the said defendant and moves the Court here to set aside the verdict in said cause and grant a new trial thereof, for the reasons,

1st That the Court admitted evidence for the plaintiff which should have been excluded. and

2d That the Court excluded evidence for the defendant which should have been admitted; and

3d That the Court gave instructions for the plaintiff which should have been refused; and

4th That the Court refused instructions asked by the defendant which should have been given.

A Holmes atty for Deft

56

which motion being afterwards fully heard was over-
ruled by the Court to which decision overruling
said motion the defendant excepted and prayed
the Court to allow sign & seal this her bill of
exceptions which is done this seventeenth day of
June 1858. Samuel Reber Judge. (Seal)
And afterwards the following further proceedings
were had in this cause to wit;

Friday June 18th 1858

Appeal granted

The defendant files an affidavit for an appeal herein
and on its motion by attorney an appeal is allowed
it to the Supreme Court from the judgment herein
and said defendant thereupon files an appeal bond
with John Cavender as principal and Henry S.
Reed and William A Gargadine as securities which
bond is approved by the Court.
The affidavit for appeal, and appeal bond filed
are in the words and figures following to wit;

Affidavit

State of Missouri }
County of St Louis } ss John Cavender President
of the Mutual Savings Institution
maketh oath and saith that as president he
is agent of the defendant in this behalf and that the
appeal of said defendant in the above entitled
cause is not made for vexation or delay, but because
the affiant believes that the appellant is aggrieved
by the judgment and decision of the Court
Sworn to and Subscribed } John Cavender.
before me this 18th June 1858 } C. H. Nicks clk.

57

Appeal Bond

Know all men by these Presents that we John Cavender as principal and Henry S. Reed and William A. Hargadine as securities are indebted to Theodore Redon in the sum of fifteen Hundred Dollars for the payment whereof we bind ourselves our heirs executors and administrators, jointly & severally firmly by these presents. Sealed with our seals and dated at St Louis this Eighteenth day of June One thousand eight hundred and fifty eight. The Condition of this obligation is such, that whereas the Mutual Savings Institution defendant has appealed from the judgment rendered against her and in favor of said Theodore Redon plaintiff in the St Louis Court of Common Pleas for the sum of six hundred & thirty eight dollars & ten cents, together with costs. Now if the said appellant shall prosecute her appeal with due diligence to a decision in the Supreme Court, and shall perform such judgment as shall be given by the Supreme Court, or such as the Supreme Court may direct the St Louis Court of Common Pleas to give, and if the judgment of such Court or any part thereof be affirmed that she will comply with and perform the same so far as it may be affirmed and will pay all damages and costs which may be awarded against her by the Supreme Court then this obligation to be void otherwise to remain in full force

John Cavender (Seal)
Henry S. Reed (Seal) Wm. A. Hargadine (Seal)

58 Approved June 18th 1858 Attest
C. W. Hicks
clerk

State of Missouri
County of St Louis } Ss I Charles W. Hicks
Clerk of the St Louis Court
of Common Pleas within and for the County
aforesaid certify the above and foregoing to be a
full true and complete transcript of the record
and proceedings in the case of Theodore Bredow
plaintiff against The Mutual Savings Institu-
-tion defendant as fully as the same remains in
my Office.

In testimony whereof I hereto
set my hand and affix the
seal of said Court at office
in the City of St Louis this
19th day of July AD
1858.

C. W. Hicks
clerk.

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(25) 90 ~~206~~

March. T. 1859.

Theodore Bredow.
Respondent.

vs Transcript

The Mutual
Savings Institution.
Appellant

Appeal from St Louis
Court of Common Pleas

A. Holmes.

Filed 17th August 1858.
Wm. S. Glanville
Clk.

Ex d

$2.25 00 paid by Mutual
Savings Institution.

a fight error / apts. brief / apts. stat. / arg. & sub. /
res stat / res brief / Reversed & remanded 18 June 1859 - B. p. 379)

3 pages of 33 lines a page & 12 words a line.

Theodore Bredow
v. Respondent
The Mutual Savings
Institution
Appellant.

In the Supreme Court
Oct. T. 1858.

And now at this day comes the said Appellant by her Attorney, and says that there is manifest error in the record and proceedings in said cause, in this to wit:

First. That the Court below erred in overruling the defendant's motion for a new trial therein;

Second, That the Court erred in giving judgment for the plaintiff below, when the same, by the law of the land, should have been given for the defendant.

Wherefore, the Appellant prays that the judgment aforesaid may be reversed, & the cause remanded.

N. Holmes
Atty. for the Appelt.

The Respondent says there is no error in the said Record & proceedings & Judgt and prays says Judgt may be in all things affirmed

Gardner
for Respdt

No. ~~206~~ 90.

Bredow
v. Res.

The Mutual Savings Institution, Appellant.

Assigt. of Errors.

A. Holmes
Atty. for Appelt.

Filed 30 Oct. 1858.

Wm S Glanville
Ck

Theodore Bredow
v. Appellee
The Mutual Savings Institution
Apellant

In the Supreme Court

March T. 1859.

Statement.

This was an action in the nature of trover for two notes, under the following state of facts: Alpheus E. Koehls and Henry Golberg, partners in trade under the style of Koehls & Golberg, during the existence of the partnership, indorsed to the Mutual Savings Institution, and deposited for collection and as collateral security for an indebtedness then existing from them to the Institution, the two notes in question, one made by one J. H. Heidemann of Peoria, Ills. for $437.96, payable to the order of Koehls & Golberg, and the other made by one H. V. Bodemann of Muscatine, Iowa, for $209., payable to the order of Koehls & Golberg.

Afterwards, on the 27 aug. 1856, the partnership was dissolved by notice, either partner to use the name of the firm "only in liquidation", and, a few days thereafter, in the month of September, Henry Golberg died. His widow, Elise, on the 29 Sept. 1856,

was, by letters testamentary of that date, appointed, and qualified, as Executrix, and she included in her inventory as required by law the whole of the partnership property of said late firm: but she did not give the further bond required by the statute to authorize her to take possession of and administer the partnership estate. On the 16th Oct. 1856, Alphens E. Koehls, being about to leave the State, gave a power of attorney to one Rudolph Macwitz, authorizing him, among other things, to settle up the business of the late firm; and Koehls, directly afterwards, departed for Europe, and ceased to be a resident of this State, having never given bond and undertaken the administration of the partnership estate under the provisions of the act.

On the 1st Dec. 1856, Macwitz, acting under his power of attorney, executed and delivered to the firm of Bredow & Schaffler a written instrument purporting to be an assignment and transfer of the two notes aforesaid to them, as an indemnity against a liability which they had incurred as indorsers for said firm of Koehls & Golberg, previous to the dissolution; and on the 2d Dec. 1856, Bredow & Schaffler presented said instrument to the defendant and demanded the two notes. The notes were not

given up. And afterwards, said Schaffler transferred all his interest in his firm to his partner, the plaintiff.

It was further in evidence that said notes were indorsed to the defendant for collection and as collateral security for an indebtedness of Roehls & Golbery to the Institution, and that said indebtedness had on the 12th day of Dec. 1836, been fully paid off and discharged; and that said notes had not then been collected; that they had been sent to Iowa and Illinois for collection, but were not paid when due, and had never been paid to the defendant.

It was further in evidence in support of the answer, that, on the 23d Dec. 1836, the said Elize, Administratrix, not having given bond under the act so as to authorize her to administer on the partnership estate, her letters were revoked, and on the 6th Jan. 1837, letters were granted de bonis non, to Charles Enslin, who thereupon gave the further bond required by the act, of that date, and undertook the administration of the partnership estate, according to the provisions of the act: and, on the 7th day of Feb. 1837, as such administrator,

he demanded of the defendant the said two notes, producing the bank book in which the entry of the deposit was made, and the same were thereupon delivered up to him, and the entry cancelled.

John Cavenda, President of the Mutual Savings Institution and a stockholder therein, was offered as a witness on the part of the defendant, and excluded for the reason that he was a stockholder; and an exception was taken.

The Court gave the following instructions for the plaintiff, to which the defendant excepted:

"If the jury find from the evidence, that the firm of Koehls & Golberg was dissolved by mutual consent on or about the 28th day of August, 1856, that by the terms of the dissolution each partner was authorized to use the name of the firm in liquidation; that on or about the 20 day of Dec., 1856, Koehls, one of said firm, by his attorney in fact assigned and transferred the two promissory notes mentioned and

described in the petition to the firm of Bredow & Schaffler for the purpose of securing and holding them harmless from the payment of the note for $400. mentioned in the petition, and that said last named ~~time~~ note was endorsed by said Bredow & Schaffler solely for the accommodation and benefit of the said Roehls & Goldberg, and that said Bredow & Schaffler did take up and pay said note of $400, then the said notes of Bodemann and Heidemann became by said transfer the property of said Bredow & Schaffler, and of the jury further find, that on or about the 2d day of December, 1856, the defendant was notified of the said assignment and transfer of said notes to said Bredow & Schaffler, and that Schaffler afterwards assigned and transferred his interest in the said notes to plaintiff: And that the defendant has ever since the said transfer to said Bredow & Schaffler neglected and refused to deliver the said notes or the proceeds thereof to said Bredow & Schaffler, or to plaintiff, after demand made for the same of defendant, then Plaintiff is entitled to recover against defendant the amount

of said two notes, and the jury should find accordingly; unless the jury further find that the notes were deposited with defendant to secure an indebtedness of the firm of Roehls & Golberg to defendant, and that such indebtedness was still unpaid at the time the notes were demanded by Bredow & Schaffler; in this case, the jury will find for the defendant."

The defendant asked the following instructions which were refused, and an exception taken:

"1. If the jury believe from the evidence that the two notes in question were deposited with the defendant by the firm of Roehls & Golberg, prior to the dissolution of said firm, for collection and as collateral security for an indebtedness of said firm to the defendant then existing and unpaid, and that the said Henry Golberg died before the power of attorney from said Alpheus C. Roehls to said Rudolph Maewitz was executed, and that Charles Enslin, as administrator of the estate of said Henry Gol-

berg, deceased, before proceeding to administer upon said partnership property, gave further bond to the State of Missouri to the satisfaction of the St. Louis Probate Court, conditioned that he would faithfully execute that trust, and with no unnecessary waste or expense, and that said two notes were, thereafterwards, on demand of said administrator, delivered up to him, they will find for the defendant.

2. If the jury believe from the evidence, that the two notes in question were deposited with defendant by said firm of Koehler & Golberg, prior to the dissolution of said firm, for collection, and that said Henry Golberg died, before said power of attorney from said Koehler to said Rudolph Moewitz was executed; that said Alpheus B. Koehler ceased to be a resident of this State, and never gave bond as surviving partner to the State of Missouri, conditioned that he would use due diligence and fidelity in closing the affairs of said late copartnership; and that Charles Dustin, as administrator of the estate of said Henry Golberg

deceased, before proceeding to administer upon said partnership property, gave further bond to the State of Illinois to the satisfaction of the St. Louis Probate Court, conditioned that he would faithfully execute that trust and with no unnecessary waste or expense, and that said notes were delivered up to him, they will find for the defendant.

3. If the jury believe from the evidence that the two notes in question were deposited with defendant by the firm of Koehls & Golberg, prior to the dissolution of said firm, for collection and as collateral security for an indebtedness then existing from said firm to the defendant, and that the power of attorney from Alpheus S. Koehls to said Rudolph Noewitz, given in evidence by the plaintiff, was executed after the death of said Henry Golberg, they will find for the defendant, unless they also believe that the said Koehls, before he ceased to be a resident of this State, had given bond as surviving partner to the State of Illinois,

conditions that he would use due diligence and fidelity in closing the affairs of said late copartnership:

4. If the jury believe from the evidence, that the two notes in question were deposited with defendant by the firm of Koehler & Golberg, prior to the dissolution of said firm, for collection and as collateral security for an indebtedness then existing from said firm to said defendant, and that the power of attorney from said Koehler to said Rudolph Moewitz, given in evidence by plaintiff, was executed after the death of said Golberg, they will find for the defendant.

5. If the jury believe from the evidence that the two notes in question were deposited by said firm of Koehler & Golberg for collection and as collateral security for an indebtedness then existing from said firm to said defendant for moneys loaned and advanced, they will find for the defendant, unless they are also satisfied from the evidence, that at the time when said Bredow & Schof-

fler demanded said notes of the defendant, the entire amount of said indebtedness had been paid off and extinguished.

6. If the jury believe from the evidence, that at the time when said two notes were demanded of the defendant by said Bredow & Schoffler, the said notes had not been collected by the defendant, the plaintiff can only recover what said notes are proved to have been then worth.

The verdict being for plaintiff, the defendant filed a motion for a new trial, which was overruled, an exception taken, & a bill of exceptions filed; and the case is brought up by appeal.

N. Holmes,
Counsel for Appellant

No. 90.

Supreme Court

Theodore Bredow
Respondent
v.
The Mutual Savings
Institution.
Appellant

Statement.

Filed 9 April 1859
Wm T Carrington
Clk

Submit if not in Court.

Theodore Bredow, Respondent
v.
The Mutual Savings Institution, Appellant

In the Supreme Court
March T. 1859.

N. Holmes for the appellant:

I. After the death of Henry Golberg, Charles Enslin, his administrator, having given bond as required by the statute concerning the administration of partnership estates, (the surviving partner having declined to undertake such administration in the manner required by the statute,) was the only person entitled by law to demand and have from the defendant the possession of the notes in question.

Rev. Stat. 1855, p. 121: Administration of Partnership Estates. The effect of this statute is, to place our law in relation to surviving partners on the same footing as the law of Louisiana, which is based upon the civil law. Notrebe v. McKinney 6 Rob. (La. R.) 13; "no such legal capacity exists in our jurisprudence as that

of surviving partner, although, in certain cases, the surviving partner be entitled to administer, on being regularly appointed. Until such appointment, he has no authority, nor is he then styled surviving partner, but administrator."

Coop. Jus. Inst. lib. III, tit. 10, & notes, p. 575-6, the "bonorum possessio" was granted by the Praetor.

By both the civil and the common law, the death of either partner is, ipso facto, a dissolution of the partnership, and instantly, as to their rights and interests in the property, the partners become tenants in common. 3 Kent 56; 1 Dom. Civ. Law (Gush.) § 874; Gow. Part. 358-9; Sto. Part. § 346. The death of one partner completely puts an end to the power of the survivor to engage in new transactions, contracts, or liabilities; Sto. Part. § 343. The right of the surviving partner, under the law as it stood before this statute, to sue in his own name, and wind up the concerns, rested, not on any survivorship of interest, but on purely technical reasons, in the construction of the courts, that there might be a right of action somewhere. - the executor could not join; the judgments would be different -; Gow. Part.

258. The right of a surviving partner to take possession of the assets, sell the property, collect the notes and debts, settle the affairs, and wind up the concern, had the same scope and extent - meant the same thing - as an administration of the partnership estate; Sto. Part. §§ 322, 328. Under the common law, a surviving partner could take upon himself this administration, under the civil law, he could not, without being appointed administrator. The effect of the statute is, essentially, to conform our law to the civil law: it takes away this right of administration, unless he will give bond and proceed according to the statute. By § 51 (p. 121) he must make an inventory, have an appraisement, and do all things in the manner provided by the act. By § 57, the Probate Court is to have the same authority over him as over a general administrator. By § 55, the condition of the bond required is co-extensive with the administrative rights, powers, and duties, of a surviving partner before the act. By §s 54 & 58, if the surviving partner does not undertake the administration within 30 days, the

general administrator shall forthwith proceed to undertake it, giving a further bond (§ 57). By § 65 this administration shall conform to the rules of an ordinary administration. It is the plain intent of the statute, that, thereafter, those concerned in the estate of a deceased partner should have security for a faithful administration and final account of the partnership property.

II. Taking the law to be, now, as it stood before this act, the plaintiff was not entitled to demand and receive from the defendant the possession of these notes, under the power of attorney to Macomb and the assignments; for

1. The surviving partner himself had no power or authority to indorse and assign, in the name of the firm, notes held by the firm at the dissolution, even in settlement of debts, nor to put in circulation notes previously indorsed by the firm.

3 Kent 63; Toney v. Baxter 13 Verm. 452; Wordsworth v. Downer 13 Verm. 522, not even to pay a prior debt; Humphries v. Chastain 5 Geo. R. 166, nor to renew; Parker v. Cousins, 2 Grattan 372, even in settlement; Sto. Part. §322; Abel v. Sutton, 3 Esp. 108, Kenyon J.: beyond all controversy, after dissolution, one cannot in the partnership name bind the rest, nor put into circulation notes indorsed before dissolution; Kilgour v. Finlyson, 1 H. Bl. 155; Sandford v. Mickles, 4 John. 224, fully affirms Lord Kenyon. Dickerson v. Wheeler, 1 Humph. (Ten.) 51; Fellows v. Wyman 33 N.H. 351-6, not even without recourse. Sto. Part. §328. (citing 2 Sells Comm. Bk. 7 ch. 2 p. 643 (5th ed.) after dissolution no valid indorsation can be made by the partner surviving.

2. The power of attorney could give to Macuitz no more authority than the surviving partner himself had; and the right to use the name of the firm "in liquidation only" conferred no more authority than the partners would have had without those words, and, if it did, any such additional authority was revoked by the death of the other partner.

Fowler v. Richardson, 3 Sneed 508; Conklin v. Osborne, 7 Ind. 553; Parker v. McComber, 18 Pick. 505, as to power in liquidation.

Death of one puts an end to all authority as partners. 3 Kent 56; Sto. Part §343.

3. As to articles of property, the executor has a right to have the value ascertained by a sale and conversion into money, and as to notes and debts due, they must be collected merely, not sold or assigned.

Gow. Part. 234, 237; Graham v. Collins 15 Ves. 218-226; Sto. Part. §322; 1 Taml. 261-5.

It is "impossible to separate the right to indorse a bill by one, passing the title, from the legal responsibility on all those having an interest in it", and therefore the parties "must all join", and, if one be dead, his administrator. 4 John. 224-7; 1 Humph. 51.

III. These notes having been indorsed to the defendant, before dissolution of the firm, the legal title to the instruments and the possession were in the defendant, and the supposed assignment by attorney, by a separate instrument, if valid for any purpose, could only give to the assignee an equitable interest in the proceeds of the notes when collected by the institution, but no right to demand the possession of the notes themselves.

If they had been choses in action in the hands of the partnership at the dissolution, the survivor might have had the sole right, at common law, of suing & reducing them to money, as laid down in Sto. Part. § 346: but even that right was taken away by the Statute.

IV. The assignment under the power by the surviving partner could transfer nothing but his interest, as a tenant in common, in the final balance of the partnership account, when the same should be adjusted and settled by the person entitled to administer on the partnership estate and wind up the concern; and the defendant was liable to account for the notes, or the proceeds thereof when collected, to such person only.

Sto. Part. § 326; Gow. Part. 235-6.

The administrator was that person, under the Statute.

V. It being proved that these notes were indorsed to the Institution as collateral security for a debt (as well as collection), the burden of proof was thrown upon the plaintiff to show that the debt had been paid off before the demand was made for the notes; and the defendants' fifth instruction should have been given.

VI. The court erred in excluding the witness, Cavender: a stockholder in a corporation is a competent witness.

Barclay v. Globe Mut. Ins. Co. 26 Mo. 490.

VII. Even if trover could be maintained for the notes as such, no more could be recovered than the value proved: and the defendants' sixth instruction should have been given.

The measure of damages in trover is the value of the property converted; Sedg. Dam. 474.

Though in trover for a bill, note, or other security for the payment of money, the meas-

the of damages may be, *prima facie*, the amount of the security, the defendant is at liberty to reduce that valuation by evidence showing insolvency of the maker, or any fact tending to invalidate the security. Ledg. Dam. 488.

Here, there was evidence tending to reduce the value of these notes. It was proved that they were in suit, in Iowa & Illinois, & had not been collected.

No. 90.

Supreme Court

Bredow

v. Res.

The Mutual Savings Institution.
appellant

Brief for Appellant.

N. Holmes.

Filed 9 April 1859
Wm S Geannilee
Ck

Theodore Bredow Respdt vs The Mutual Savings Institution Appellant	In Sup Court March ~~April~~ Term 1859 Respondents Statement and Brief

Sometime in the year 1856 the firm of Koels & Goldberg (Composed of A L Koels & Henry Goldberg) deposited with the Defendant (an incorporated Company doing a Banking business in this City) as Collateral Security for an indebtedness of said firm to Deft and also for Collection, Two promissory Notes One Made by P A Heideman of Peoria Ill for $437 $\frac{96}{100}$, and the other by A V Bodeman of Peoria Illinois for $200 $\frac{00}{100}$ — Afterwards and on the 15th of August 1856 said firm of Koels & Goldberg for the purpose of raising Money Made a Negotiable promissory Note for $600. $\frac{00}{100}$ payable to the order of themselves, which was Endorsed by themselves and one Brunzerhof, and finally for the accommodation of Koels & Goldberg was endorsed by the firm of Bredow and Schoffler (Composed of this Plff and one Christian Schoffler), This Note of $600. $\frac{00}{100}$ Koels & Goldberg had discounted ~~at~~ the United States Insurance Company and received the proceeds of it —

Afterwards and on the 27th of August

1856. The firm of Koels & Goldberg was dissolved by Mutual Consent The following is a Copy of the Notice of dissolution published at the time in both English and German Newspapers of this City viz

Notice

The Partnership heretofore Existing between the undersigned under the firm of Koels & Goldberg has by Mutual Consent and on account of sickness of Mr Goldberg this day been dissolved Either party May use the Name of the firm only in liquidation

St Louis August 27th 1856, A E Koels
Henry Goldberg

Afterwards and in the Month of September 1856 one of the firm Goldberg died and Koels the other Partner being about to make a trip to Europe executed a power of Attorney to one Rudolph Mackwitz dated 16th Oct 1856 which was duly acknowledged & recorded, and which authorised said Mackwitz among other things to settle up the affairs of the said Late firm of Koels & Goldberg, as far as the said Koels might do if personally present. (See Record page 24)

After the execution of said Power of Attorney and after Koels departure for Europe. The said Note for

$600 00/100 became due and was protested for non payment and the firm of Bredow & Schaffler became liable on the same as Endorsers, and being pressed by the holders for payment the said Mackwitz as atty in fact for Koels and for the purpose of liquidating and discharging the indebted-ness of Koels & Goldberg on said $600.00 note and of holding harmless the firm of Bredow & Schaffler the accommodation Endorsers on the same, made an assignment of the two notes of Steidemann and Bodeman then in Defendants possession to the said firm of Bredow & Schaffler This assignment was made about the 1st of December 1856 and authorised Bredow & Schaffler to demand and receive said two notes ~~from Defendant~~ or the proceeds thereof if collected, from defendant, and showing upon its face that it was given for the purpose of settling & discharging said $600.00 note 00/100 Immediately upon receiving said order or assignment Bredow & Schaffler took up and paid the $600 00/100 note and on the 2nd of Decr 1856 presented the order or assignment to the Defendant at its place of business and demanded of Adolphus Nohl the Cashier and Secretary of Defendant and the person in charge of Defts business, the said two notes said Nohl refused at that time to deliver up the notes, But desired

to have the Assignment or order left with him for a few days for the purpose of submitting it to the Board of Directors of Defendant Respondent consented to and did deliver said Assignment to the said Nahl Secretary and Treasurer of Appellant. Since which time Respondent has often demanded said Assignment and said two Notes from the President, Secretary and Treasurer of Appellant, who have always refused either to deliver said two Notes or the proceeds thereof to Respondents or to return the said Assignment to him, alleging that Mackwitz had no authority to assign the notes.

On the 31st of December 1856 the Co-partnership of Bredow & Schaffler was dissolved by Mutual Consent and this Respondent Bredow became the owner and entitled to all the partnership assets among other things to the two Notes in question.

Afterwards and on the 6th day of January 1857 One Charles Anselin was appointed administrator de bonis non with the will annexed of said Henry Goldberg

Upon this State of facts this suit was brought by Respondent to recover the Amount of the two Notes

Bill of Exceptions

Wm G Pettus a witness for Plff testified that the Note of $600.00/100 Made by Koels & Goldberg and Endorsed by Bredow & Schaffler was discounted by the United States Insurance Company for the benefit of Koels & Goldberg and the money was paid to them, after the Note became due the Endorsers Bredow & Schaffler Settled it page 22 of Record

Rudolph Mackwitz a witness for Plff proved the Signatures of the Koels & Goldberg to the Notices of the dissolution of that firm and that the body of those Notices were in the hand writing of the Secretary & Treasurer of Defendant= that he by virtue of the Power of Attorney read in Evidence Gave to Bredow & Shaffler an order on Deft for the the two Notes in Controversy that he gave them that order or assignment at the time they took up the $600.00/100 Note for the purpose of indemnifying them against loss on that Note, That Mr Adolph Nohl the Secretary and Treasurer of the Defendant asked him (witness) if he had authority to give such an Order & requested him to hand in his power of Attorney to Institution (Deft) for Examination, that he did so hand it in to said Nohl who kept it 2 or 3 days and returned it= On cross examination the witness testified that Nohl the Secretary and Treasurer of Defendant told him that at the time the order was handed to him there was a balance in the hands of the ~~Institution~~ Defendant in favor of Koels &

Goldberg amounting to $184,00 and that the Notes in question were no longer held by Deft as Collateral Security

Eisemann a witness for Plffs Proves that the order for the Notes was presented at the office of Deft to Nohl the Secretary & Treasurer of Deft on or about the 2nd day of December 1856 & that the Notes were then demanded of him that Nohl the Secretary then handed the order to Cavender the President of Deft who also read it and then refused to give up the Notes, The assignment or order was also left with the President & Secretary of Deft at their request & was never returned by them, although demanded, This witness also proved the dissolution of the firm of Bredow & Schaffler

Other testimony was given on the part of Plffs tending to prove the contents of the assignment, and other minor points set forth in the Petition

The jury rendered a verdict for Plffs for $638.05 the amount of the two Notes without interest

Gardner
for Respdt

No 90

Theadore Bredow
Respd

vs

The Mutual Savings
Institution
Appellant

Respondents Statement

Gardners
for Respdt

Filed 18 April 1859
Wm S Glenville Cl.

Theodore Bredow
Respdt
vs
The Mutual Savings
Institution Appellant

In Sup Court
March Term 1859

Respondents Points
& Brief

The main point in this case and that upon which all the others turn is whether or not under our Statute a Surviving partner has the right to apply partnership assets to the payment of Partnership debts prior to administration upon the partnership estate,

If Koels himself could have transferred the Notes in question to Bredow & Schaffler after his partners death or after the dissolution of the firm by agreement, and for the purpose of settling the $600 Note, Surely it will not be contended that he (Koels) could not authorise by Power of Atty, Mackwitz to do the Same

Although the legal title to the Notes in question had passed from Koels & Goldberg to Deft Still they had the right to demand of Defendant the Notes or the proceeds of them. So if one had deposited Money with Deft as a Banker the legal title to the Coin itself passed

but the right to demand its equivalent remained & could be assigned to another

As to whether or not the Notes were held by the Defendant as Collateral Security at the time they were demanded by Plaintiff was a question of fact which was fairly Submitted to the jury in the instruction given at the trial for plaintiff — The latter part of which instruction is the Same in Substance and almost identical in language with the 3rd instruction asked by Defts Counsel
See close of Defts Instruction, foot of page 301 of Record

Great stress is laid by Appellant upon the fact that Enselin was appointed administrator of the deceased partner and gave the necessary bonds qualifying him to take possession of the partnership Effects — But bearing in Mind the fact that he was not so appointed until More than a Month had Elapsed after plaintiffs Right of action accrued — Respondent insists that such appointment Can in No Manner affect this Suit, That he is before the Court as if No administrator had ever been appointed or qualified up to this day, and as if Koels had as Surviving partner Continued in possession of the partnership

Effects, and had fully settled up the partnership business

And unless this Court shall hold that a surviving partner is not known to our law — that his right to the possession and control of the partnership property dies with his partner — that although surviving in fact — yet in law he is dead also — then it must be conceded that a fair and honest settlement of a partnership debt with partnership means by the surviving partner, is not subject to be questioned or resisted by a third party as this Deft is, ~~an~~ by an administrator subsequently appointed

It is conceded that if the notes had remained in Defts hands unappropriated by Koels up to the appointment of Enselin as administrator, that he, Enselin, could have claimed them. But having been long before such appointment appropriated in good faith by Koels to the payment of the partnership indebtedness of $600 00/100 they were placed as much beyond the reach of the administrator as if they had been actually collected by Koels himself after the dissolution, and their proceeds applied by him to the payment of the same indebtedness of $600 00/100

The act of one partner is the act of both as well after the dissolution of the firm as before. So long as it is within the scope of the partnership, or is confined to the settlement of partnership affairs. If Koels could have collected the Notes in question after the dissolution and applied the proceeds to the payment of the $600.00 Note. Why could he not directly apply the Notes to that purpose by ordering Deft to deliver them or their proceeds if collected to Plff? It was doing directly what it must be conceded he could have done indirectly.

If by the assignment of Koels to the Respdt he became entitled to the Notes in question or their proceeds, the subsequent appointment & qualification of Enselin as admr could in no manner affect Respondents vested rights — And Defendant having after full notice of the assignt to Plff and after demand made by Plaintiff for the Notes delivered them to Enselin. With no proof tending in any manner to show that they were not worth what they called for on their faces, the measure of damages was the amount of the Notes. Which is all the jury allowed

The transaction as between Koels and the Plff was bona fide in the fullest sense of the term — was not out of the usual course of business, was such as one partner might well make, and was advantageous to the partnership in that it extinguished an immediate pressing partnership indebtedness by an outstanding claim which could not by any possibility be immediately realised and might eventually be lost

The assignment imposed no new liability upon the firm, nor in any manner increased their indebtedness It was neither the making or endorsing of notes, nor putting notes previously made or endorsed in circulation, but it was the assignment and transfer of a claim which one partner might always make, before or after the dissolution of the partnership

See Morse vs Bellows 7 N. Hampshire R 567
Hodges vs Harris 6 Pickering 360

The firm of Koels & Goldberg having been dissolved previous to the death of Goldberg his death in no manner affected the rights of the survivor Koels until the appointment and qualification of Euselin as admr of Goldberg or the partnership Estate

After the dissolution, whether by agreement or death, Koels as survivor could not create new liabilities in the name of the firm But he might do all things legitimate & proper to settle up its past transactions as well debits as credits, with the same effect as if the firm had never been dissolved — In other words, the partnership was not dissolved as to the past but only as to the future,

Murray vs Mumford 6 Cowen 441
Watson on partnerships 267 side paging 364

The letters of administration to Mrs Goldberg do not figure in this case, as she never became entitled under the Statute to interfere with the partnership effects —

The assumption that Koels was a non-resident of this State at the time of the transfer of the Notes to Plff, because he had gone on a trip to Europe, is entirely unsupported by proof —

The Equities of this case are all with the Respondent, he has paid full value for the Notes in question, They were transferred to him by the only person who could pretend to any interest in or control over them at the time of such transfer

and who it is urged had the absolute right so to dispose of them — The Defendant does not pretend to have any interest in or claim upon, They were no longer held as Collateral Security at the time they were demanded by Plff. Their delivery was refused Solely upon the ground that Mackwitz had no power to transfer them

The Defendant has resisted this claim from the beginning simply upon the idea, that a Surviving partner as such, has no authority as such to Meddle with partnership effects Until he has leave to do so from the Probate Court. This idea is drawn from the lowest depths of the Roman or Civil law. And is entirely repugnant to Modern practice. Although anciently the "bonorum possessio" was granted by the Praetor Yet that is not now in use Even in Countries where the Civil law prevails — Much less with us where in default of a Statute we resort to the Common law

Under the Common law and previous to our present Statute, The Surviving partner only, was entitled to the possession Control and disposition of the partnership effects

and could even maintain trover against the Executor of the deceased partner for partnership property. The law which made the surviving partner personally liable for the joint debts by a necessary consequence gave him the exclusive control over the partnership property.

It only remains then to consider what modification of that rule is made by our Statute. Upon a careful review of that Statute it seems to be apparent that the Legislature did not intend to make any radical change from the principals of the common law, but only sought to give creditors and others interested in the estate of a deceased partner some additional security for the faithful administration and final settlement of the partnership assets.

The result of our Legislation upon the subject is this. The surviving partner may

1st Give the Statutory bond and retain the possession of the partnership assets

2nd He may (if possible) settle up the whole partnership business within thirty days after letters testamentary or of administration

shall have been granted upon the deceased partners Estate, without giving any bond at all. or

3 At the Expiration of the thirty days if the admr of the deceased partner shall have given the requisite bond he may turn over to him the partnership Estate,

The Statute expressly provides that the partnership property shall remain in the possession of the survivor, subject only to be appraised by the admr of the deceased partner and it is to remain in his possession at least thirty days after letters ~~of~~ testamentary or of administration shall have been granted on the Estate of the deceased partner and until such Executor or administrator shall give the required bonds, although that might not be done for years, after the dissolution of the partnership
See R S page 122 Sections 54, to 58.

Can it then be said that a fair and honest adjustment of a partnership debt by the surviving partner, made before the law deprived him of the possession of the partnership property and while he was the only legal Custodian of the same, shall not be binding upon all concerned?-

Although the Court below may have erred in the Exclusion of the Witness Cavender, Yet a decision of the Main issue in the case by this Court at this time will undoubtedly prevent farther litigation

Gardners
for Respdts

90

Theodore Bredow
Respdt

vs

The Mutual Savings
Institution
Appellant

Respdts Brief

Gardners
for Respdt

Filed 18 April 1859
Wm. F. Glanville
Clk.

The Reader will make a statement, and he will find the statement made by Mr Holmes very clear

No 90. Bredow vs The Mutual Saving Institution

The main questions in this case are, whether the statute regulating the administration of partnership estates (1. R. C. 1855. p. 121) prohibits a surviving partner from winding up, and settling the partnership concerns unless he first gives bond with security, for the faithful discharge of his duties; and next, whether a surviving partner independently of the statute has authority to pay the legal title to a partnership note above transferred in payment of a partnership debt.

If the surviving partner executes a bond as provided in the 54th & 55th sections of the act, he cannot be disturbed by the ~~admin~~ personal representatives of his deceased partner in the possession of the partnership property, and in the right to use it in any manner consistently with the primary duty of closing the partnership affairs. He ought to give the bond required by law whenever he undertakes to wind up the partnership estate, and if he fails to do so, for the period of thirty days after letters testamentary or of administration have been granted on the estate of the deceased partner, he is liable at any time to have the business taken out of his hands, but his power as surviving partner is not suspended until he gives a bond, nor is it superseded by the mere appointment of an administrator of the deceased partner, for the administrator as such has no right to administer upon the partnership effects without giving an additional bond. (Sec. 59).

The grant of letters testamentary to Mrs. Golling gave her no authority to interfere with the partnership property, because she did not give the further bond required by law; and though Roehl omitted to give a bond as surviving partner, his authority continued until superseded by the appointment of Eusha administrator de bonis non, who gave

both of the bonds required by the statute, and until he qualified all the rights of the surviving partner remained unaffected by the statute. though he did not attempt to comply with it.

The dissolution of a partnership, as between the partners themselves, operates as a revocation of their joint powers to employ the property or funds of the partnership any ~~further~~ longer in the business or trade thereof. As soon as the partnership ceases, the partners become tenants in common of all the partnership property and effects. and ~~no~~ neither of them can create new contracts binding upon the partnership, nor buy or sell goods on account thereof, nor indorse or transfer the partnership securities. (McDaniel vs Wood 7. Mo. 543. Long vs Story 10 N. 636). But ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ ~~and~~ each of the partners has authority to collect and pay debts, to adjust unliquidated accounts, to receive any property belonging to the firm, and to apply the partnership assets and effects to the payment of its liabilities, for these rights and powers remain as indispensable to the final settlement of the affairs of the partnership, and are subordinate to the paramount duty of the partners to wind up the partnership concerns with diligence and in good faith for their mutual interest. The authority of one partner, which is implied from a partnership, to act for another, is revoked the moment the partnership ceases, and as the partners then become only tenants in common of the property and assets undisposed of, one of them without the consent of the others cannot transfer the title to any of the partnership securities, and all of them must join in an action to recover any of the outstanding debts.

The reason of this is, not simply because one partner after a dissolution cannot by his indorsement of a

note, create a new liability binding upon the others, but because, only having an undivided interest in a partnership note, he cannot without the consent of the other partners transfer the title to the whole of it.

When however a partnership is dissolved by death, although the personal representatives of the deceased partner, becomes tenants in common with the survivor, of all the partnership property and effects in possession, they do not become tenants in common of the choses in action belonging to the partnership, for they belong to the survivor. The legal title to them by operation of law is cast upon the the survivor, and he has the exclusive right to reduce them into possession. ~~(Story. Part. § 346)~~ and must sue upon them in his own name without joining the representatives of the deceased partner, though he will be accountable to the partnership for whatever he collects. (Story. Part. § 346). This is upon the principle that though chargable as a trustee for the proceeds of partnership notes when received, the legal title to them is in the survivor, and if he has the legal title he can transfer them although his indorsement may not affect the estate of his deceased partner with any remote or contingent liability. It is a mere question of power.

Upon the death of Golberg, the title to the partnership notes rested in Koehl as surviving partner, and he had the power before Ensley ~~qualified~~ to transfer the notes in controversy to the plaintiff, in payment of a partnership liability, he did not thereby impose any new obligation on the partnership, but on the contrary paid a firm debt, and reduced the partnership liabilities to that extent.

The proposition contained in the fifth instruction asked by the defendant is embraced in an

instruction given by the Court

The measure of damages in an action of trover for the conversion of a chose in action is prima facie the amount that appears to be due on it, subject to be reduced by proof showing that it is of less value than it calls for O'Donoghue vs Corby 22 Mo. 393. Menkens vs Menkens 23 N. 252. The circumstance that the notes in controversy were in suit, we do not think was evidence that the makers of them were insolvent, or that the principal and interest due on them would not be collected, but perhaps the reasonable expenses for collecting them ought to be deducted from any recovery against the defendant

On the authority of Barclay vs Globe Mutual Ins. Co (26. Mo. 490). the Court improperly excluded Mr Cavender as a witness. ~~[illegible]~~ on the ground that he was stockholder in the defendant and for that reason the judgment will be reversed and the cause remanded

The other judges Concur

McKinstrey

No 90

Bredow

The Mutual Sav. Inst

Opinion of the Court

Per Remanded

Filed 18 June 1859.

Wm. S. Glanville Ac.

Rubaerfer