

No. 13499

Supreme Court of Illinois

^S
Sto~~X~~ke.

vs.

People.

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 204.

Street
23
People

3471
1867

People

Supreme Court

Case 204

Clemens Stose, Sheriff &c
Appellant,

vs
The People of the State of
Illinois, who sue for all &c
appellees.

The appellees in this cause, by Geo. Seville
their attorney, come and move the court
to dismiss the appeal in this case for want
of a sufficient appeal bond.

The following are objections to the
sufficiency of said bond.

The same is executed by the atty
in fact of appellant, and the power
of attorney under which said atty
acts, a copy of which is annexed to said
bond, does not authorize said atty to
execute the same. The general expressions
in said power of atty cannot be extended
beyond the scope of the particular
powers delegated, and the special
powers do not embrace the execution of
this bond.

Geo. Seville
atty for appellees.

²⁰⁴
Supreme Court

Clemens Storz

Imp² &c

vs

The People, &c

Motion to dis-
miss appeal.

Filed April 17, 1861

L. L. Linn

clerk

Motion Overruled.

Wm. H. Linn

Scott & Co., Printers, corner Clark and South Water Sts., Chicago.

SUPREME COURT
OF THE
STATE OF ILLINOIS.
THIRD GRAND DIVISION.

APRIL TERM, 1861.

CLEMENS STOSE, impleaded with FRED. WEIS, }
Appellant, }
VS. }
THE PEOPLE OF THE STATE OF ILLINOIS, }
whe sue to the use of JULIUS ROSENTHAL, }
Appellee. }

RECORD
PAGE.

ABSTRACT OF RECORD.

- 1 Placita of Superior Court of Chicago.
- 2 Attachment bond filed November 9, 1860.

George Scoville, etc., states that he is attorney for Julius Rosenthal, administrator *de bonis non*, with the will annexed, of the estate of George Frederick Heym, deceased. That Fred. Weis, formerly executor of said estate, but lately removed from office of executor by the County Court of Cook County, Illinois, and Clemens Stose, survivors of Andrew Getzler, deceased, are jointly indebted and liable to the People, etc., to the use of Rosenthal, upon the official bond of said Weis, as executor as aforesaid, by reason of the breaches of the condition thereof by said Weis, as executor, and from a *devastavit* by him of said estate, in the sum of *eleven hundred and ninety-eight dollars and sixty-eight*

- 3 *cents*, being \$950, balance in the hands of said Weis as executor as aforesaid, June 20, A. D. 1856, belonging to said estate, after deducting payments made by him on account of said estate, and to Kunigunde Müsel, one of the devisees in the will of said Heym, deceased, and interest on said sum of \$950 from June 20, A. D. 1856, to the present time, being \$248.60. That said bond bears date the 29th day of October, 1846, and was made by said Weis, Stose, and by one Andrew Getzler, who is since deceased, leaving Weis and Stose, survivors, in the penal sum of fifteen hundred dollars, running to the People of the State of Illinois, and conditioned, in substance, that said Weis, as executor as aforesaid, should make a true and perfect inventory of all and singular the goods and chattels, rights, credits, lands, tenements, and hereditaments, and the rents, issues and profits of the same, of deceased, which should come to the hands, possession, or knowledge of said Weis, or into the possession of any other person for him, and the same so made should exhibit in the Probate Court of said county, as required by law; and also make and render a fair and just account of his actings as such executor, to said court, when thereto lawfully required, and well and truly fulfill the duties enjoined upon him by said will; should pay and deliver to the persons entitled thereto, all legacies and bequests contained in said will, so far as the estate should extend, according to value, and as the law should charge him; and should do all other acts which might be required of him by law.
- 4
- 5 Security for costs filed, with the affidavit for attachment.
- 6 Attachment bond in \$2,400.
- 7, 8, 9, 10 Attachment writ and return of levy on divers parcels of real estate.
- 11 Declaration filed 23rd November, 1860.

The People, etc., complain of Fred. Weis, etc., and Clemens Stose, survivors of Andrew Getzler, deceased, of a plea that they render to plaintiffs *fifteen hundred dollars*, which defendants unjustly detain from plaintiffs.

- 12 For that said defendants and Andrew Getzler, in the lifetime of Getzler, viz., 29th October, 1846, at the county, etc., by their certain writing obligatory, etc., acknowledged themselves held and bound to the People, plaintiffs, etc., in the penal sum of \$1,500, the said sum above demanded, for the payment of which, etc., defendants and said Getzler bound themselves, etc.: conditioned, that if said Fred. Weis, executor, etc., did make, or cause to be made, a true and perfect inventory of all and singular the goods and chattels, rights, credits, lands and tenements, and hereditaments, and the rents and profits issuing out of the same, of said deceased, which should come into the hands, knowledge, or posses-

13 sion of said Weis, or of any other person for him, and the same so made did exhibit in the Probate Court of Cook county, as required by law; and also make and render a just account of his actings and doings as such executor, to said court, when lawfully required; and well and truly to fulfill the duties enjoined upon him by said will, and moreover pay and deliver to the persons entitled thereto, all the legacies and bequests contained in said will, so far as the estate of said testator should extend, according to value, and as the law should charge him; and should in general do all other acts which might from time to time be required of him by law, then said obligation to be void, otherwise to remain of full force and virtue.

That said Andrew Getzler died on the 10th of April, A. D. 1859, before the commencement of this suit.

14 That upon the execution of said bond, said Fred. Weis was, viz., Oct. 29, 1846, duly appointed executor of said will, by the Court of Probate of Cook county, and entered upon the duties of the office. That there came into the hands and possession of said Weis, as such executor, viz., fourteen hundred dollars. That afterwards, on the 20th of June, A. D. 1856, on a settlement of the demands against the estate of said Heym, in the County Court of Cook county, there was found to be in the hands of Weis, as such executor, a large sum of money, viz., \$1,103.78, the balance of said estate of said Heym, which, by said County Court, the said Weis, executor as aforesaid, was then ordered to pay over to the said devisees, under the will of said deceased, or their heirs.

15 Plaintiff further avers, that on the 19th of March, A. D. 1860, viz., at said county, before said Weis had paid over to the devisees, under the will of said Heym, or to their heirs, the said sum of money last aforesaid, being the balance in his hands, as executor, etc., such proceedings were had and entered of record, in said County Court of Cook county, that it was ordered by said court that the said Weis be, and he was then and there, by the order and judgment of said court in the premises, removed from his office as such executor, etc. That on the day and year last aforesaid, at the county aforesaid, by the order and judgment of the said Cook County Court, administration *de bonis non*, with the will annexed, of the estate of the said George Fred. Heym, deceased, was granted to Julius Rosenthal, aforesaid, and letters of administration, in pursuance of such order and judgment, were thereupon duly granted and issued by said court to said Rosenthal. That said Rosenthal then and there accepted, and entered upon the duties of said office of administration, as aforesaid, of said estate, under and in pursuance of said order and judgment of said court, and hath thence hitherto been such administrator *de bonis non*, etc. That in and by the last will of said Heym, and according to the true intent and meaning thereof, the said Weis was directed, and it became his duty as such executor, to keep

16 a large part, viz., six hundred dollars, of the money so received by him, loaned out on securities for the benefit of certain devisees under said will, who were then minors, until said minors should become of lawful age; and it further became and was the duty of said Weis, as executor as aforesaid, upon his removal from said office by the said County Court, to account with, and pay over to said Julius Rosenthal, as his successor in office, and as administrator *de bonis non*, etc., on demand made therefor by said Rosenthal, the balance of moneys in the hands of said Weis belonging to said estate.

Yet said Weis did not, from the time of making said writing obligatory, and after assuming and entering upon the duties of said office as executor, etc., keep a large part, or any part of the moneys received by him, etc., as such executor as aforesaid, loaned out on securities for the benefit of said devisees under said will, who were minors, until the said minors became of lawful age, but wholly neglected and failed to do so.

17 Nor did said Weis, upon his removal from said office of executor, as aforesaid, account with or pay over to said Rosenthal, as his successor in office, or as administrator *de bonis non*, with the will annexed, of the estate of said Heym, etc., the balance of moneys in the hands of said Weis belonging to said estate, though demand was made therefor of him by said Rosenthal, etc.

And said plaintiffs, for assigning a further breach of conditions of said writing obligatory, say, that said Weis did not well and truly fulfill the duties enjoined upon him by said will; *in this: that he committed a devastavit of said estate, etc., and misapplied the funds and property of said estate, and appropriated a large part thereof to his own use, to wit, the sum of \$1,200.*

18 And for a further breach of said conditions, plaintiffs say, that said Weis *did not pay, or deliver to the persons entitled thereto, all the legacies and bequests contained in said will, so far as the estate of said testator would thereunto extend, according to the value thereof*, and as the law charged him, but refused and neglected to pay or deliver a large part of the moneys in his hands as executor as aforesaid, to the persons entitled thereto under the said will, viz., \$1,100, to Dorothen Müssel, one of the devisees under said will. By means whereof, said plaintiffs, to use of Rosenthal, have sustained damages to the amount of \$1,500; by reason of which said breaches, said writing obligatory became forfeited, and according to the statute in such case, etc., an action hath accrued to said plaintiffs, etc., to demand, etc., of said defendants, survivors, etc., the sum of \$1,500. Yet said defendants have not paid, etc., according to the conditions of said writing obligatory, etc., but so to do have wholly refused, etc.; *to the damage of said*

plaintiffs, for the use of said Rosenthal, etc., of eleven hundred and ninety-eight dollars and sixty cents, and therefore they bring suit, etc.

GEO. SCOVILLE, Plaintiffs' Attorney.

- 19 Copy of bond sued on set out at length, same as that given in evi-
20 dence on trial, and contained in bill of exceptions, *infra*, which see, at
page 6 of this Abstract.
- 21, 22 Default as to Weis, December 20, 1860.
- 23 Publication of notice, as to Stose, filed.
- 24 Default, as to Stose, taken.
- 25, 26. Afterwards set aside, and defendant then allowed to plead.
- 27 Plea of general issue in debt, by Clemens Stose, accompanied by affi-
davit of merits.
- 28 Default, as to Stose, set aside by order of court, upon agreement of
29 parties in open court. Cause submitted to the court for trial without a
jury, on issues joined on plea of defendant Stose, impleaded with Weis,
etc. And the court, after hearing evidence and arguments of counsel,
finds issues for plaintiff, on the issues joined on plea of Stose, and
assesses their damages, for use aforesaid, against both of the said defend-
ants, to the sum of *one thousand two hundred and seven dollars*.
- Defendant Stose moves for a new trial, which is overruled by the
court; to which, said defendant thereupon excepts, and enters his
exceptions.
- Wherefore said plaintiffs ought to have judgment, for use, etc., entered
on the finding of the court.
- Therefore it is considered, that the plaintiffs do have and recover of
and from the said defendants, for use of Rosenthal, etc., their damages
of *one thousand two hundred and seven dollars*, by the court in form
aforesaid assessed and found, together with their costs and charges, and
have execution therefor; and that an order issue for the sale of the
30 property attached.

Exceptions entered, and appeal prayed. Allowed on filing bond,
approved by the court, in the sum of \$1,400, to be filed with bill of
exceptions, during the February term of court.

- 31 Bill of exceptions filed February 21, 1861, during the February term of court.

Jury trial waived, and cause submitted to the court for trial, by agreement.

Plaintiffs offered in evidence a certain bond, purporting to be signed by Fred. Weis, Andrew Getzler, and Clemens Stose, in words and figures as follows :

- 32 " Know all Men by these Presents, That we, Frederick Weis, Andrew Getzler, and Clemens Stose, of the County of Cook and State of Illinois, are held and firmly bound unto the People of the State of Illinois, in the penal sum of fifteen hundred dollars, current money of the United States, which payment well and truly to be made and performed, we and each of us bind ourselves, our heirs, executors and administrators, jointly, severally and firmly by these presents. Witness our hands and seals this twenty-ninth day of October, A. D. 1846. The condition of the above obligation is such, that if the above bound Frederick Weis, executor of the last will and testament of George Fred. Heym, deceased, do make, or cause to be made, a true and perfect inventory of all and singular the goods and chattels, rights and credits, lands, tenements and hereditaments, and the rents, issues and profits issuing out of the same, of the said deceased, which have or shall come into the hands, possession or knowledge of the said Frederick Weis, or into the possession of any other person for him, and the same so made do exhibit in the Probate Court of the said county of Cook, as required by law ; and also make and render a fair and just account of his actings and doings, as such executor, to said court, when thereunto lawfully required, and well and truly to fulfill the duties enjoined upon him in and by said will ; and shall, moreover, pay and deliver to the persons entitled thereto, all the legacies and bequests contained in said will, so far as the estate of the said testator will thereto extend, according to the value thereof, and as the law shall charge him, and shall, in general, do all other acts which may, from time to time, be required of him by law, then this obligation to be void, otherwise to remain in full force and virtue.

Attest:	FREDERICK WEIS. [L. s.]
M. D. OGDEN.	CLEMENS STOSE. [L. s.]
P. J. PEACE.	A. GETZLER. [L. s.]

- 33 The testimony was objected to by defendant Stose. Objection overruled, and bond admitted as evidence. Exception by Stose to the overruling of his objection and to the admission of the testimony.

Plaintiffs next offered in evidence a paper, purporting to be a certified copy of a certain order and proceedings, supposed to have taken place, and to have been made by the Cook County Court; which certified paper is as follows:

COUNTY COURT OF COOK COUNTY.
June Term.

Present—Hon. Henry L. RUCKER, Judge.
CHARLES B. FARWELL, Clerk.

Be it remembered, that on this day the following proceedings were, by and before said court, had and entered of record:

Heym, Geo., Estate of. { *Allowance of Claim and*
 Executor's Account.

34 This day comes into court, Frederick Weis, executor of the last will and testament of George F. Heym, deceased, by his attorney, O. R. W. Lull, and also comes George Scoville, appointed to defend the estate of said deceased against the claim of said Weis, and it is ordered that said claim be allowed and paid, as follows, viz.:

CLASS NUMBER FOUR.

Frederick Weis' account, - - - - - - - \$152.00

Said executor also renders his account as such executor, showing receipts, amounting to - - - - - - - \$1,341.60

And disbursements, amounting to - - - - - - - 237.82

Which having been examined and approved, is ordered to be recorded, and it is further ordered, that the matter of citation in this estate be dismissed at the cost of said executor. And it appearing to the court that said executor has paid all claims legally established against said estate, it is ordered that he pay over to the devisees under the will of said deceased, or their heirs, the balance of said estate shown to be in his hands.

H. L. RUCKER, *Judge.*

STATE OF ILLINOIS, }
COOK COUNTY. } ss.

35 I, Charles B. Farwell, Clerk of the County Court in and for said county, do hereby certify the foregoing to be a true transcript from the record of said court.

In testimony whereof, I hereunto set my hand and affix the seal of
[SEAL.] said court, at Chicago, this 11th day of July, A. D. 1860.

C. B. FARWELL, *Clerk.*

Defendant Stose objected to the admission of this paper in evidence. Objection overruled, and exception thereto taken.

Plaintiff further offered to give in evidence a certain other paper, purporting to be a certified copy of a certain order and proceedings

supposed to have taken place in, and rendered by the Cook County Court, which paper is as follows:

36 Placita of Cook County Court.

Order that an attachment issue against Weis for not responding to citation.

37 Appearance of Weis, in custody of an officer of court.

Order that he pay the costs of this procedure, and that upon payment of costs, he be discharged.

And it appearing to the court that said executor has mismanaged and neglected the estate of said deceased, and has misappropriated the assets of the same, it is ordered that he be removed from his office as such executor.

Application of Julius Rosenthal for administration *de bonis non*, etc. And it appearing that said estate has not been fully administered, and that said Rosenthal is a suitable person, etc., it is ordered that administration *de bonis non* be granted to said Rosenthal, etc., upon his entering into bond in the sum of \$2,000, according to law.

38 Grant of letters of administration *de bonis non*, etc.

Certificate of clerk, etc., under seal of court.

Objection to the evidence. Objection overruled, and evidence admitted, and exception taken.

39 It was admitted, that before the commencement of the present action, a demand had been made by Rosenthal on Weis for the money claimed in this suit. It was also admitted, that the letters of administration copied into the bill of exceptions had been granted and issued by the County Court to Rosenthal before the commencement of this suit. But
40 no point being made, or intended to be made, upon them, it is not deemed necessary to abstract them, or set them forth here, further than by mere reference to the Record.

The above was all the evidence given in the case, no evidence being offered or given by the defendants.

Court found for plaintiffs, the sum of \$1,207, against defendants Weis and Stose. Motion for a new trial by Stose. Overruled. And judgment given for plaintiffs.

41 Exception by defendant Stose to the overruling of his motion for a new trial. Bill of exceptions allowed, signed, and sealed by Grant Goodrich, Judge.

ERRORS ASSIGNED.

- 48 1. That the court erred in admitting in evidence the certified copies
of the orders and proceedings of the Cook County Court. See pages
of Record, 31, 32, 33, 34, 35, 36, 37.
- 49 2. In admitting the bond to be given in evidence without proof of
its execution and delivery by Getzler, or of the death of Getzler.
3. In finding for plaintiffs below.
4. In overruling the motion for a new trial.
5. In giving judgment for plaintiffs against defendants, in manner
and form and for the amount shown by the Record.
- 50 6. General assignment of errors.

Joinder in error.

ARTHUR W. WINDETT,
Attorney for Appellant.

MARCH 21, 1861.

SCOTT & Co., Printers, corner Clark and South Water Sts., Chicago.

SUPREME COURT
OF THE
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THIRD GRAND DIVISION.

APRIL TERM, 1861.

CLEMENS STOSE, impleaded with FRED. WEIS, }
Appellant, }
vs. }
THE PEOPLE OF THE STATE OF ILLINOIS, }
who sue to the use of JULIUS ROSENTHAL, etc., }
Appellee. }

BRIEF OF POINTS AND AUTHORITIES FOR APPELLANT.

I. As against this appellant, the bond given in evidence was not admissible, without proof of its execution by Getzler, and of its delivery after signature by its makers, and of Getzler's death.

a. Both of these facts were matter of averment in the declaration—were essential and material averments—and proof of them was necessary upon the trial. But no evidence upon either of these points was offered, or given upon the trial.

b. Distinct proof of its delivery, after execution, and of its acceptance as a legal and valid instrument, and as an official bond, was absolutely necessary.

United States Bank v. Dondridge, 12 Wheat. Rep. 90, 115, 116.

II. As against Stose, the certified copies of orders and proceedings in the County Court, were not proper evidence in this case, simply, and by themselves. They, as well as the original records themselves, were, as to him, but memorials of *res inter alios actas*.

III. There was not proof sufficient before the court to warrant and uphold the finding of the court for the plaintiffs.

a. Stose was but a surety ; no presumption, as against him, could take the place of explicit proof. Besides, Rosenthal had no right or interest to support this suit, nor a right of recovery in this action. The estate was fully administered by Weis. It fully appears that no *estate not administered by Weis*, yet remained. If any liability existed at all, it was a direct liability on the part of Weis to the devisees of the will. But as to who and what they are, we are left in the dark. The will is not produced, or given in evidence.* The duties and liabilities of Weis, under the terms and provisions of the will, are unknown ; and so also are the rights of the devisees themselves, their nature and extent when complete, vested and consummate.

b. The administration, then, having been completed by Weis, and a final balance struck of the amount of money in his hands belonging to the estate, the present action should have been brought to the use of the devisees under the will, if, indeed, any such there were. There was no authority to create superfluous administration of this estate, for the profit of the public administrator.

Rowan v. Kirkpatrick, 14 Ill. pp. 1 — 15. "It was insisted on the argument, that it was the duty of Rowan, as administrator *de bonis non* of James, to collect from the estate of Alexander all claims which the heirs of James might have upon it ; and that the heirs could not maintain a suit against the administrator of Alexander Reid, for assets converted by him in the administration by him of their ancestor's estate. *Directly the reverse is the law.* The heirs or distributees can, and the administrator *de bonis non* cannot, maintain such a suit. An administrator *de bonis non* has no authority to call upon the first administrator for an account of assets already administered upon. His commission only authorizes him to *administer upon so much of the estate as was unadministered upon by the former administrator.* Whatever goods and chattels of the first estate remain in specie, or can be traced and distinguished, the administrator *de bonis non* has a right to recover ; but he has no right to call for an account of any part of the estate sold, con-

verted, or wasted by the first administrator. When an administrator converts the goods of an intestate to his own use, *it is an administration of such goods*, and being an administration, is consequently without the commission of an administrator *de bonis non*. The established practice, therefore, is, for the *distributees* or *creditors* of the intestate, and not the administrator *de bonis non*, to prosecute the representatives of the first administrator for any waste or misapplication of the assets of that administration."

Warwick v. McMerdo, 5 Randolph, 51.
Cheatham v. Friend, 9 Leigh, 580.
Smith v. Carrese, 1 Richardson's Eq. Rep. 123.
Oldham v. Collins, 4 Bibb, 49.
Felts v. Brown, 7 Bibb, 147.
Young v. Kimball, 8 Blackford, 167.
Bacon's Abr., title Executor, B. 2.
 1 Williams on Executors, 656.
Potts v. Smith, 3 Rawle, 361.
Hagthorp v. Hooker, 1 Gill & John. 270.
Coleman v. McMerdo, 5 Randolph, 51.
Thomas v. Hardwick, 1 Kelly, 78.
Newhall v. Turney, 14 Ill. 338-341.

IV. The judgment is wrong, both in form and substance.

a. The declaration claims damages, \$1,197. The finding and judgment of the court are both in excess of that amount, being for \$1,207.

b. The judgment does not ascertain the separate amounts of the debt, and of the damages. In this respect, both are fatally defective.

Russell v. Chicago, 22 Ill. 285-8.
Fournier v. Faggott, 3 Scammon R. 347.
Stephens v. Sweeney, 2 Gilman R. 347.
Walcott v. Holcomb, 24 Ill. 331.
Brown v. Smith, 24 Ill. Rep. 196-198.

ARTHUR W. WINDETT,

Attorney, and of Counsel with Appellant.

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Stose
vs

The people

Abstract

Spencer.

To
People

Filed Apr 29-1861

L. Leland

Clark

Scott & Co., Printers, corner Clark and South Water Sts., Chicago.

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- 3 cents, being \$950, balance in the hands of said Weis as executor as aforesaid, June 20, A. D. 1856, belonging to said estate, after deducting payments made by him on account of said estate, and to Kunigunde Müsel, one of the devisees in the will of said Heym, deceased, and interest on said sum of \$950 from June 20, A. D. 1856, to the present time, being \$248.60. That said bond bears date the 29th day of October, 1846, and was made by said Weis, Stose, and by one Andrew Getzler, who is since deceased, leaving Weis and Stose, survivors, in the penal sum of fifteen hundred dollars, running to the People of the State of Illinois, and conditioned, in substance, that said Weis, as executor as aforesaid, should make a true and perfect inventory of all and singular the goods and chattels, rights, credits, lands, tenements, and hereditaments, and the rents, issues and profits of the same, of deceased, which should come to the hands, possession, or knowledge of said Weis, or into the possession of any other person for him, and the same so made should exhibit in the Probate Court of said county, as required by law; and also make and render a fair and just account of his actings as such
- 4 executor, to said court, when thereto lawfully required, and well and truly fulfill the duties enjoined upon him by said will; should pay and deliver to the persons entitled thereto, all legacies and bequests contained in said will, so far as the estate should extend, according to value, and as the law should charge him; and should do all other acts which might be required of him by law.
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- 12 For that said defendants and Andrew Getzler, in the lifetime of Getzler, viz., 29th October, 1846, at the county, etc., by their certain writing obligatory, etc., acknowledged themselves held and bound to the People, plaintiffs, etc., in the penal sum of \$1,500, the said sum above demanded, for the payment of which, etc., defendants and said Getzler bound themselves, etc.: conditioned, that if said Fred. Weis, executor, etc., did make, or cause to be made, a true and perfect inventory of all and singular the goods and chattels, rights, credits, lands and tenements, and hereditaments, and the rents and profits issuing out of the same, of said deceased, which should come into the hands, knowledge, or posses-

13 sion of said Weis, or of any other person for him, and the same so made did exhibit in the Probate Court of Cook county, as required by law; and also make and render a just account of his actings and doings as such executor, to said court, when lawfully required; and well and truly to fulfill the duties enjoined upon him by said will, and moreover pay and deliver to the persons entitled thereto, all the legacies and bequests contained in said will, so far as the estate of said testator should extend, according to value, and as the law should charge him; and should in general do all other acts which might from time to time be required of him by law, then said obligation to be void, otherwise to remain of full force and virtue.

That said Andrew Getzler died on the 10th of April, A. D. 1859, before the commencement of this suit.

14 That upon the execution of said bond, said Fred. Weis was, viz., Oct. 29, 1846, duly appointed executor of said will, by the Court of Probate of Cook county, and entered upon the duties of the office. That there came into the hands and possession of said Weis, as such executor, viz., fourteen hundred dollars. That afterwards, on the 20th of June, A. D. 1856, on a settlement of the demands against the estate of said Heym, in the County Court of Cook county, there was found to be in the hands of Weis, as such executor, a large sum of money, viz., \$1,103.78, the balance of said estate of said Heym, which, by said County Court, the said Weis, executor as aforesaid, was then ordered to pay over to the said devisees, under the will of said deceased, or their heirs.

15 Plaintiff further avers, that on the 19th of March, A. D. 1860, viz., at said county, before said Weis had paid over to the devisees, under the will of said Heym, or to their heirs, the said sum of money last aforesaid, being the balance in his hands, as executor, etc., such proceedings were had and entered of record, in said County Court of Cook county, that it was ordered by said court that the said Weis be, and he was then and there, by the order and judgment of said court in the premises, removed from his office as such executor, etc. That on the day and year last aforesaid, at the county aforesaid, by the order and judgment of the said Cook County Court, administration *de bonis non*, with the will annexed, of the estate of the said George Fred. Heym, deceased, was granted to Julius Rosenthal, aforesaid, and letters of administration, in pursuance of such order and judgment, were thereupon duly granted and issued by said court to said Rosenthal. That said Rosenthal then and there accepted, and entered upon the duties of said office of administration, as aforesaid, of said estate, under and in pursuance of said order and judgment of said court, and hath thence hitherto been such administrator *de bonis non*, etc. That in and by the last will of said Heym, and according to the true intent and meaning thereof, the said Weis was directed, and it became his duty as such executor, to keep

16 a large part, viz., six hundred dollars, of the money so received by him, loaned out on securities for the benefit of certain devisees under said will, who were then minors, until said minors should become of lawful age; and it further became and was the duty of said Weis, as executor as aforesaid, upon his removal from said office by the said County Court, to account with, and pay over to said Julius Rosenthal, as his successor in office, and as administrator *de bonis non*, etc., on demand made therefor by said Rosenthal, the balance of moneys in the hands of said Weis belonging to said estate.

Yet said Weis did not, from the time of making said writing obligatory, and after assuming and entering upon the duties of said office as executor, etc., keep a large part, or any part of the moneys received by him, etc., as such executor as aforesaid, loaned out on securities for the benefit of said devisees under said will, who were minors, until the said minors became of lawful age, but wholly neglected and failed to do so.

17 Nor did said Weis, upon his removal from said office of executor, as aforesaid, account with or pay over to said Rosenthal, as his successor in office, or as administrator *de bonis non*, with the will annexed, of the estate of said Heym, etc., the balance of moneys in the hands of said Weis belonging to said estate, though demand was made therefor of him by said Rosenthal, etc.

And said plaintiffs, for assigning a further breach of conditions of said writing obligatory, say, that said Weis did not well and truly fulfill the duties enjoined upon him by said will; *in this: that he committed a devastavit of said estate, etc., and misapplied the funds and property of said estate, and appropriated a large part thereof to his own use, to wit, the sum of \$1,200.*

18 And for a further breach of said conditions, plaintiffs say, that said Weis *did not pay, or deliver to the persons entitled thereto, all the legacies and bequests contained in said will, so far as the estate of said testator would thereunto extend, according to the value thereof*, and as the law charged him, but refused and neglected to pay or deliver a large part of the moneys in his hands as executor as aforesaid, to the persons entitled thereto under the said will, viz., \$1,100, to Dorothea Müssel, one of the devisees under said will. By means whereof, said plaintiffs, to use of Rosenthal, have sustained damages to the amount of \$1,500; by reason of which said breaches, said writing obligatory became forfeited, and according to the statute in such case, etc., an action hath accrued to said plaintiffs, etc., to demand, etc., of said defendants, survivors, etc., the sum of \$1,500. Yet said defendants have not paid, etc., according to the conditions of said writing obligatory, etc., but so to do have wholly refused, etc.; *to the damage of said*

plaintiffs, for the use of said Rosenthal, etc., of eleven hundred and ninety-eight dollars and sixty cents, and therefore they bring suit, etc.

GEO. SCOVILLE, Plaintiffs' Attorney.

- 19 Copy of bond sued on set out at length, same as that given in evi-
20 dence on trial, and contained in bill of exceptions, *infra*, which see, at
page 6 of this Abstract.
- 21, 22 Default as to Weis, December 20, 1860.
- 23 Publication of notice, as to Stose, filed.
- 24 Default, as to Stose, taken.
- 25, 26 Afterwards set aside, and defendant then allowed to plead.
- 27 Plea of general issue in debt, by Clemens Stose, accompanied by affi-
davit of merits.
- 28 Default, as to Stose, set aside by order of court, upon agreement of
29 parties in open court. Cause submitted to the court for trial without a
jury, on issues joined on plea of defendant Stose, impleaded with Weis,
etc. And the court, after hearing evidence and arguments of counsel,
finds issues for plaintiff, on the issues joined on plea of Stose, and
assesses their damages, for use aforesaid, against both of the said defend-
ants, to the sum of *one thousand two hundred and seven dollars*.
- Defendant Stose moves for a new trial, which is overruled by the
court; to which, said defendant thereupon excepts, and enters his
exceptions.
- Wherefore said plaintiffs ought to have judgment, for use, etc., entered
on the finding of the court.
- Therefore it is considered, that the plaintiffs do have and recover of
and from the said defendants, for use of Rosenthal, etc., their damages
of *one thousand two hundred and seven dollars*, by the court in form
aforesaid assessed and found, together with their costs and charges, and
have execution therefor; and that an order issue for the sale of the
30 property attached.

Exceptions entered, and appeal prayed. Allowed on filing bond,
approved by the court, in the sum of \$1,400, to be filed with bill of
exceptions, during the February term of court.

- 31 Bill of exceptions filed February 21, 1861, during the February term of court.

Jury trial waived, and cause submitted to the court for trial, by agreement.

Plaintiffs offered in evidence a certain bond, purporting to be signed by Fred. Weis, Andrew Getzler, and Clemens Stose, in words and figures as follows:

- 32 " Know all Men by these Presents, That we, Frederick Weis, Andrew Getzler, and Clemens Stose, of the County of Cook and State of Illinois, are held and firmly bound unto the People of the State of Illinois, in the penal sum of fifteen hundred dollars, current money of the United States, which payment well and truly to be made and performed, we and each of us bind ourselves, our heirs, executors and administrators, jointly, severally and firmly by these presents. Witness our hands and seals this twenty-ninth day of October, A. D. 1846. The condition of the above obligation is such, that if the above bound Frederick Weis, executor of the last will and testament of George Fred. Heym, deceased, do make, or cause to be made, a true and perfect inventory of all and singular the goods and chattels, rights and credits, lands, tenements and hereditaments, and the rents, issues and profits issuing out of the same, of the said deceased, which have or shall come into the hands, possession or knowledge of the said Frederick Weis, or into the possession of any other person for him, and the same so made do exhibit in the Probate Court of the said county of Cook, as required by law; and also make and render a fair and just account of his actings and doings, as such executor, to said court, when thereunto lawfully required, and well and truly to fulfill the duties enjoined upon him in and by said will; and shall, moreover, pay and deliver to the persons entitled thereto, all the legacies and bequests contained in said will, so far as the estate of the said testator will thereto extend, according to the value thereof, and as the law shall charge him, and shall, in general, do all other acts which may, from time to time, be required of him by law, then this obligation to be void, otherwise to remain in full force and virtue.

Attest:

M. D. OGDEN.
P. J. PEACE.

FREDERICK WEIS. [L. s.]
CLEMENS STOSE. [L. s.]
A. GETZLER. [L. s.]

- 33 The testimony was objected to by defendant Stose. Objection overruled, and bond admitted as evidence. Exception by Stose to the overruling of his objection and to the admission of the testimony.

Plaintiffs next offered in evidence a paper, purporting to be a certified copy of a certain order and proceedings, supposed to have taken place, and to have been made by the Cook County Court; which certified paper is as follows:

COUNTY COURT OF COOK COUNTY.
June Term.

Present—Hon. Henry L. RUCKER, Judge.
CHARLES B. FARWELL, Clerk.

Be it remembered, that on this day the following proceedings were, by and before said court, had and entered of record:

Heym, Geo., Estate of. { *Allowance of Claim and*
Executor's Account.

34 This day comes into court, Frederick Weis, executor of the last will and testament of George F. Heym, deceased, by his attorney, O. R. W. Lull, and also comes George Scoville, appointed to defend the estate of said deceased against the claim of said Weis, and it is ordered that said claim be allowed and paid, as follows, viz.:

CLASS NUMBER FOUR.

Frederick Weis' account, - - - - - \$152.00

Said executor also renders his account as such executor, showing receipts, amounting to - - - - - \$1,341.60

And disbursements, amounting to - - - - - 237.82

Which having been examined and approved, is ordered to be recorded, and it is further ordered, that the matter of citation in this estate be dismissed at the cost of said executor. And it appearing to the court that said executor has paid all claims legally established against said estate, it is ordered that he pay over to the devisees under the will of said deceased, or their heirs, the balance of said estate shown to be in his hands.

H. L. RUCKER, *Judge.*

STATE OF ILLINOIS, }
COOK COUNTY. } ss.

35 I, Charles B. Farwell, Clerk of the County Court in and for said county, do hereby certify the foregoing to be a true transcript from the record of said court.

In testimony whereof, I hereunto set my hand and affix the seal of said court, at Chicago, this 11th day of July, A. D. 1860.
[SEAL.]

C. B. FARWELL, *Clerk.*

Defendant Stose objected to the admission of this paper in evidence. Objection overruled, and exception thereto taken.

Plaintiff further offered to give in evidence a certain other paper, purporting to be a certified copy of a certain order and proceedings

supposed to have taken place in, and rendered by the Cook County Court, which paper is as follows:

36 Placita of Cook County Court.

Order that an attachment issue against Weis for not responding to citation.

37 Appearance of Weis, in custody of an officer of court.

Order that he pay the costs of this procedure, and that upon payment of costs, he be discharged.

And it appearing to the court that said executor has mismanaged and neglected the estate of said deceased, and has misappropriated the assets of the same, it is ordered that he be removed from his office as such executor.

Application of Julius Rosenthal for administration *de bonis non*, etc. And it appearing that said estate has not been fully administered, and that said Rosenthal is a suitable person, etc., it is ordered that administration *de bonis non* be granted to said Rosenthal, etc., upon his entering into bond in the sum of \$2,000, according to law.

38 Grant of letters of administration *de bonis non*, etc.

Certificate of clerk, etc., under seal of court.

Objection to the evidence. Objection overruled, and evidence admitted, and exception taken.

39 It was admitted, that before the commencement of the present action, a demand had been made by Rosenthal on Weis for the money claimed in this suit. It was also admitted, that the letters of administration copied into the bill of exceptions had been granted and issued by the County Court to Rosenthal before the commencement of this suit. But no point being made, or intended to be made, upon them, it is not
40 deemed necessary to abstract them, or set them forth here, further than by mere reference to the Record.

The above was all the evidence given in the case, no evidence being offered or given by the defendants.

Court found for plaintiffs, the sum of \$1,207, against defendants Weis and Stose. Motion for a new trial by Stose. Overruled. And judgment given for plaintiffs.

41 Exception by defendant Stose to the overruling of his motion for a new trial. Bill of exceptions allowed, signed, and sealed by Grant Goodrich, Judge.

ERRORS ASSIGNED.

- 48 1. That the court erred in admitting in evidence the certified copies of the orders and proceedings of the Cook County Court. See pages of Record, 31, 32, 33, 34, 35, 36, 37.
 - 49 2. In admitting the bond to be given in evidence without proof of its execution and delivery by Getzler, or of the death of Getzler.
 3. In finding for plaintiffs below.
 4. In overruling the motion for a new trial.
 5. In giving judgment for plaintiffs against defendants, in manner and form and for the amount shown by the Record.
 - 50 6. General assignment of errors.
- Joinder in error.

ARTHUR W. WINDETT,
Attorney for Appellant.

MARCH 21, 1861.

SCOTT & CO., Printers, corner Clark and South Water Sts., Chicago.

SUPREME COURT
OF THE
STATE OF ILLINOIS.
THIRD GRAND DIVISION.

APRIL TERM, 1861.

CLEMENS STOSE, impleaded with FRED. WEIS, }
Appellant, }
VS. }
THE PEOPLE OF THE STATE OF ILLINOIS, }
who sue to the use of JULIUS ROSENTHAL, etc., }
Appellee. }

BRIEF OF POINTS AND AUTHORITIES FOR APPELLANT.

I. As against this appellant, the bond given in evidence was not admissible, without proof of its execution by Getzler, and of its delivery after signature by its makers, and of Getzler's death.

a. Both of these facts were matter of averment in the declaration—were essential and material averments—and proof of them was necessary upon the trial. But no evidence upon either of these points was offered, or given upon the trial.

b. Distinct proof of its delivery, after execution, and of its acceptance as a legal and valid instrument, and as an official bond, was absolutely necessary.

United States Bank v. Dondridge, 12 Wheat. Rep. 90, 115, 116.

II. As against Stose; the certified copies of orders and proceedings in the County Court, were not proper evidence in this case, simply, and by themselves. They, as well as the original records themselves, were, as to him, but memorials of *res inter alios actas*.

III. There was not proof sufficient before the court to warrant and uphold the finding of the court for the plaintiffs.

a. Stose was but a surety; no presumption, as against him, could take the place of explicit proof. Besides, Rosenthal had no right or interest to support this suit, nor a right of recovery in this action. The estate was fully administered by Weis. It fully appears that no *estate not administered by Weis*, yet remained. If any liability existed at all, it was a direct liability on the part of Weis to the devisees of the will. But as to who and what they are, we are left in the dark. The will is not produced, or given in evidence. The duties and liabilities of Weis, under the terms and provisions of the will, are unknown; and so also are the rights of the devisees themselves, their nature and extent when complete, vested and consummate.

b. The administration, then, having been completed by Weis, and a final balance struck of the amount of money in his hands belonging to the estate, the present action should have been brought to the use of the devisees under the will, if, indeed, any such there were. There was no authority to create superfluous administration of this estate, for the profit of the public administrator.

Rowan v. Kirkpatrick, 14 Ill. pp. 1 — 15. "It was insisted on the argument, that it was the duty of Rowan, as administrator *de bonis non* of James, to collect from the estate of Alexander all claims which the heirs of James might have upon it; and that the heirs could not maintain a suit against the administrator of Alexander Reid, for assets converted by him in the administration by him of their ancestor's estate. *Directly the reverse is the law.* The heirs or distributees can, and the administrator *de bonis non* cannot, maintain such a suit. An administrator *de bonis non* has no authority to call upon the first administrator for an account of assets already administered upon. His commission only authorizes him to administer upon so much of the estate as was unadministered upon by the former administrator. Whatever goods and chattels of the first estate remain in specie, or can be traced and distinguished, the administrator *de bonis non* has a right to recover; but he has no right to call for an account of any part of the estate sold, con-

verted, or wasted by the first administrator. When an administrator converts the goods of an intestate to his own use, *it is an administration of such goods, and being an administration,* is consequently without the commission of an administrator *de bonis non*. The established practice, therefore, is, for the *distributees* or *creditors* of the intestate, and not the administrator *de bonis non*, to prosecute the representatives of the first administrator for any waste or misapplication of the assets of that administration."

Warwick v. McMerdo, 5 Randolph, 51.
Cheatham v. Friend, 9 Leigh, 580.
Smith v. Carrese, 1 Richardson's Eq. Rep. 123.
Oldham v. Collins, 4 Bibb, 49.
Fells v. Brown, 7 Bibb, 147.
Young v. Kimball, 8 Blackford, 167.
 Bacon's Abr., title Executor, B. 2.
 1 Williams on Executors, 656.
Potts v. Smith, 3 Rawle, 361.
Hagthorp v. Hooker, 1 Gill & John, 270.
Coleman v. McMerdo, 5 Randolph, 51.
Thomas v. Hardwick, 1 Kelly, 78.
Newhall v. Turney, 14 Ill. 338-341.

IV. The judgment is wrong, both in form and substance.

a. The declaration claims damages, \$1,197. The finding and judgment of the court are both in excess of that amount, being for \$1,207.

b. The judgment does not ascertain the separate amounts of the debt, and of the damages. In this respect, both are fatally defective.

Russell v. Chicago, 22 Ill. 285-8.
Fournier v. Faggott, 3 Scammon R. 347.
Stephens v. Sweeney, 2 Gilman R. 347.
Walcott v. Holcomb, 24 Ill. 331.
Brown v. Smith, 24 Ill. Rep. 196-198.

ARTHUR W. WINDETT,

Attorney, and of Counsel with Appellant.

204)

Storr

vs

The People

Abstract

Filed Apr. 29-1861

L. Laband

blank

United States of America
State of Illinois. Cook County of

1. Pleas before the the Honorable
the Judges of the Superior Court of Chicago.
within and for the County of Cook and State
of Illinois, at a regular term of the Superior
Court of Chicago, begun and holden at the
Court House in the City of Chicago in said
County and State, on the First Monday being
the Ninth day of February in the year of our
Lord Eighteen Hundred and fifty one, and
of the Independence of the United States of
America the Eighty Fifth

Present the Honorable John M. Wilson Chief Justice
of the Superior Court of Chicago
Wm H. Higgins and Grant Goodrich Judges
Charles Warren Prosecuting Attorney
Anthony C. King Sheriff of Cook County
Abner Walter Kimball
Clerk.

2

Be it remembered that heretofore to wit, on the 9th day of November in the year of our Lord one thousand eight hundred and sixty. there was filed in the office of the Clerk of the Superior Court of Chicago, a certain ^{attachment bond and bond for costs} affidavit for attachment, in the words & figures following, to wit:

State of Illinois

Cook County } ss.

George Scoville being duly sworn saith that he is Attorney for Julius Rosenthal, administrator de bonis non, with the will annexed of the Estate of George Frederick Heym, deceased. That Frederick Weis, formerly executor of said Estate, but lately removed from the office of Executor, as aforesaid, by the County Court of Cook County, State of Illinois, and Clement Arso, survivors of the said Getzler, deceased, are justly indebted and liable to the People of the State of Illinois, for the use of said Julius Rosenthal, Administrator, as aforesaid, upon the official bond of said Weis, as executor, as aforesaid, by reason of the breaches of the conditions thereof by said Weis as executor, as aforesaid, and from a devastavit by him of said Estate, in the sum of Eleven hundred and ninety eight Dollars and sixty cents, being \$958.60 balance in the hands of said Weis, as executor as

aforsaid. June 20th A. D. 1836. belonging to
said estate, after deducting payments made by
him on account of said estate, and to Henri-
gunde Miesel one of the devisees in the will of
said Henry deceased. and interest on said sum
of \$950. from the 20th day of June A. D. 1836. to the
present time, being \$1284⁰⁰/₁₀₀.

3 That said bond bears date the 29th twenty
ninth day of October A. D. 1836. and was made and
executed by said Frederick Weis and Clement
Stos, and by one Andrew Getzler, who is since
deceased, leaving said Weis and Stos then surviving:
that it is in the penal sum of fifteen hundred
dollars, running to the People of the State of
Illinois, and conditioned in substance that said
Weis, executor as aforesaid, should make or cause
to be made a true and perfect inventory of all
and singular the goods and chattels, rights and
credits, claims, tenements and hereditaments, and
the rents and profits issuing out of the same of the
deceased, which had or should come to the hands
possession or knowledge of the said Frederick Weis
or into the possession of any other person for him
and the same so made should exhibit in the Probate
Court for the said County of Cook, as required
by law: and also make and render a fair and
just account of his acting and doings as such
executor to said Court when thereunto lawfully

4)
required; and well and truly fulfil the duties
enjoined upon him in and by the said will; and
should moreover pay and deliver to the person
entitled thereto all the legacies and bequests con-
tained in said will so far as the estate of said
testator would thereunto extend according to
the value thereof, and as the law should charge
him, and should in general do all the other
acts which might from time to time be required
of him by law.

This deponent further saith that said
Clemens Stoe is not a resident of the State of
Illinois, and further saith not.

Subscribed and sworn to
before me November
1st. 1869.
Walter Kimball
Clerk

Geo Scoville

The People of the State of Illinois }
who sue for the use of Julius Rosenthal }
Administrator de bonis non with the will }
annul of the estate of George D. Hooper deceased }

The Superior Court
of Chicago.

Frederick K. Heis &
Clemens Stoe survivors &c

I do hereby enter myself

2
Security for costs in this cause, and acknowledge myself
bound to pay or cause to be paid, all costs which
may accrue in this action, either to the opposite party
or to any of the officers of this Court, in pursuance
of the laws of this State.

Dated this 8th day
of November A. D. 1860 } George Scoville.

5 I now all Men by these presents, that we
Julius Rosenthal Administrators de bonis non
with the Will annexed of the Estate of George Scoville
deceased, and George Scoville are held and
firmly bound unto Clement Sted. in the penal sum
of Twenty four Hundred Dollars lawful money
of the United States, for the payment of which
said sum, well and truly to be made, we bind
ourselves, our heirs, executors and administrators
jointly and severally, by these presents.

Sealed with our seals, and dated this 8th day
of November 1860.

The condition of the above obligation is such,
that whereas the above bounden Julius Rosenthal
Administrators as aforesaid by George Scoville
his attorney back on the day of the date hereof,
prayed an Attachment out of the Superior Court

of Chicago at the suit of the People of the State
of Illinois for the use of said Rosenthal ad-
ministrator as aforesaid. plaintiff against the
Estate of the above named (Common Bond for
the sum of Eleven Hundred Ninety eight Dollars
and fifty cents, and the same thing) about to be
sued out of said Court, returnable on the first
Monday of December A. D. 1866. to the term
of the said Court then to be holden: Now if
the said plaintiff shall prosecute his said suit
with effect, or in case of failure therein, shall
well and truly pay and satisfy the said (Common
Bond, all such costs in said suit, and such damages
as shall be awarded against the said Plaintiff
his heirs, executors or administrators, in any suit
or suits which may hereafter be brought for
wrongfully suing out the said attachment; then the
above obligation to be void: otherwise to remain
in full force and effect.

Signed, Sealed and Delivered in Presence of Julius Rosenthal
George Scoville

And thereupon to wit: on the 9th day of November
in the year aforesaid, there appeared out of and under
the Seal of said Court. The People that of Attach-
ment, which said writ with the Sheriff returns

Herein endorsed are in the words of figures following, to wit:

State of Illinois

Cook County } p. The People of the State of Illinois
to the Sheriff of said County. Greeting:

7.

Whereas George Scoville hath complained on oath to Walter Kimball, Clerk of the Superior Court of Chicago, of Cook County, that Judson H. Hiss & Clemens Stred Survivors of Andrew Getzler deceased are justly indebted to The People of the State of Illinois for use of Julius Rosenthal, adms de bonis non with the will annexed of the Estate of George J. Hays deceased to the amount of Eleven Hundred & ninety eight dollars and sixty cents; and each having taken oaths made, that the said Clemens Stred resides out of this State, so that the ordinary process of law cannot be served upon him, and the said Julius Rosenthal having given bond and security, according to the directions of the act in such case made and provided:

We therefore Command you, that you attach so much of the estate, real or personal, of the said Clemens Stred to be found in your County, as shall be of value sufficient to satisfy said debt and costs, according to the said Complaint

and such estate, so attached, in your hands to receive
or so to provide that the same may be liable to further
proceedings thereupon, according to law. at a term of said
Superior Court of Chicago to be holden at Chicago
within and for the County of Cook, on the first Mon-
day of December next. so as to compel the said
Henry Stoe to appear and answer the complaint
of the said People use of &c. and that you also
Summon Charles Stoe is garnished to be and
appear at the said Court on the said first Monday
of December next. then and there to answer to what
may be objected against him; when and where you
shall make known to the said Court that you
have executed this writ. And have you then and
there this writ.

We further Command you that you Sum-
mon Frederick Kis, if he shall be found in
your County, personally to be and appear before
the Superior Court of Chicago, of said County
on the first day of the next term thereof, to be holden
at the Court House in Chicago in said County
on the first Monday of December next. to answer
unto the People of the State of Illinois use of
Julius Bresnahan Advers de bonis reas with the
will annexed of the Estate of George J. Hagen
deceased. of a plea that he render to the said
plaintiffs fifteen hundred dollars and — cents
which he owes to and unjustly detains from him

to the damage of the said Plaintiffs as is said, in the sum of Seven Hundred Eighty Six ¹⁰/₁₀₀ Dollars.

And have you then and there this writ with an endorsement thereon, in what manner you shall have executed the same.

Witness Walter Kimball
Clerk of our said Court, and
the seal thereof, at Chicago
aforesaid, this 9th day of
November A. D. 1860.
Walter Kimball Clerk.

Seal

By virtue of the within writ of attachment, I did on the ninth day of November of November A. D. 1860. Levy upon and attach all the right, title and interest of the within named defendant (Clement Stone) in and to the following described Real Estate, to wit:

Sub Lot Five (5) of Lot Seven (7) in Block Eleven (11) in Fractional Section Fifteen (15) addition to Chicago. Also the West Forty (40) feet of the North Eighty (80) feet, and the Twenty (20) feet South and adjoining the North Eighty (80) feet of Lot Four (4) in Block Forty (40) in the Original Town of Chicago. Also Twenty eight and Eight hundredths (28¹⁰/₁₀₀) feet South and adjoining the South Fifty four and four hundredths (54⁴/₁₀₀) feet of said Lot Four (4), all in the City

of Chicago County and State aforesaid. The
said Remond Stree not found in my County - Also
served on the within Charles Stree as a garnishee, by
reading the same to him this 14th day of November
1860.

John Gray Sheriff
By A. K. Allen Deputy

Served by reading to the within named defendant
J. H. H. this 17th day of November 1860.

John Gray Sheriff
By A. K. Allen Deputy

And after wards, to wit, on the 23rd day of the
month of November aforesaid, there was filed in the
office of the Clerk of said Court a certain de-
claration in the words & figures following to wit:

State of Illinois In the Superior Court of Chicago
County of Cook }
2^d of the December Term 1860.

The People of the State of Illinois,
who sue for the use of Julius Rosenthal, adminis-
trator de bonis non, with the will annexed of

the estate of George Frederick Hegm deceased
plaintiffs say George Scoville their attorney
Complain of Frederick Wis. formerly executor
of the last will and testament of said George
Frederick Hegm, deceased, and Clement Street,
survivors of Andrew Getzler, deceased, of a
plea that they render to the said plaintiffs
the sum of fifteen hundred dollars which
the said defendants unjustly detain from
them, the said plaintiffs.

11 For that whereas the said defendants
and ^{said} Andrew Getzler heretofore, and in
the life time of the said Andrew Getzler,
since deceased, to wit, on the twenty ninth day
of October, in the year of our Lord Eighteen
hundred and fifty six, to wit, at said County
of Cook, by their certain writing obligatory,
sealed with the seals of said defendants and
said Getzler, and now shown to the Court
here, the date whereof is a certain day and
year therein mentioned, to wit, the same day
and year last aforesaid, acknowledged themselves
well held and firmly bound to the said plaintiffs
in the penal sum of fifteen hundred dollars
current money of the United States; the said
sum above demanded, which payment well
and truly to be made and performed the said
defendants and said Andrew Getzler, and

each of them did bind themselves, their heirs,
executors and administrators, jointly, severally
and firmly by these presents, with a condition
thereunder written that if the said Frederick
Weis, executor of the last will and testament
of George Frederick Hegym, deceased, did make
or cause to be made a true and perfect inventory
of all and singular the goods and chattels, rights
and credits, lands, tenements and hereditaments
and the rents and profits issuing out of the same
of the said deceased, (said George Frederick
Hegym, meaning) which had or should come to
the honor, possession or knowledge of the said
Frederick Weis, or into the possession of any
other person for him, and the same to make
did exhibit in the Probate Court for the
said County of Cook, as required by law, and
also make and render a fair and just ac-
count of his doings and things as such
executor to said Court when thereunto law-
fully required; and to well and truly fulfill
the duties enjoined upon him in and by the said
Will; and should moreover pay and deliver
to the persons entitled thereto all the legacies
and bequests contained in said will, so far
as the estate of the said testator would thereunto
extend, according to the value thereof, and
as the law should charge him: and should in

general as all other acts which might from time to time be required of him by law. then the said obligation was to be void, otherwise to remain in full force and virtue.

And afterwards, to wit, on the 10th day of April A. D. 1859. before the commencement of this suit, the said Andrew Getzler departed this life.

13. And the plaintiffs aver that upon the execution of said bond or writing obligatory, to wit, on the twenty ninth day of October A. D. 1846. the said Frederick Weis, was duly appointed executor of said last will and testament of said George Frederick Heggen, deceased, by the Probate Court of said County of Cook, and entered upon the duties of said office: and that there came into the hands and possession of said Weis, as such executor, a large amount of money, to wit, the sum of fourteen hundred dollars: and that afterwards to wit, on the 20th day of June A. D. 1856. on a settlement of the demands against the Estate of said Heggen deceased, in the County Court of Cook County, there was found to be in the hands of said Weis as such executor a large sum of money, to wit, Eleven hundred and three dollars, and seventy eight cents, the balance of said

estate of said Hays deceased, which by the
said County Court, the said Weis, Executor
as aforesaid, was then and there ordered to
pay over to the devisees under the will of
said deceased, (said George Frederick Hays
meaning), or their heirs.

14

And the said plaintiffs further aver
that afterwards to wit, on the 19th day of
March A. D. 1866. to wit, at said County of
Cook and before the said Weis, Executor as
aforesaid had paid over to the devisees under
the will of said Hays, deceased, or to their heirs
the said sum of money, last aforesaid, being
the balance in his hands, as Executor as
aforesaid, such proceedings were had and
entered of record in the said County Court
of Cook County, that it was ordered by
said Court, that the said Weis be, and there
was then and there by the order and judgment
of said County Court in the premises, removed
from his office, as such Executor as aforesaid.

And the plaintiffs further aver that
afterwards, to wit, on the day and year last
aforesaid, to wit, at said County of Cook
by the order and judgment of said County
Court of Cook County, administration de
bonis non, with the will annexed, of the estate
of said George Frederick Hays deceased.

was granted to Julius Rosenthal, aforesaid, and letters of Administration in pursuance of such order and judgment of said County Court, were thereupon, then and there duly issued to said Rosenthal by said County Court.

15- And the plaintiff further aver that said Rosenthal then and there accepted and entered upon the duties of the said office of Administrator, in aforesaid, of said estate, under and in pursuance of said order and judgment of said County Court. And that thence without law such administrator de bonis non, as aforesaid.

And the plaintiff further aver that in and by the last will and testament of said George Frederick Meyer, deceased, and according to the true intent and meaning thereof, the said Frederick was executor as aforesaid. was directed to and it became his duty as such executor, to keep a large part, to wit, six hundred dollars of the money received by him as aforesaid, loaned out on securities for the benefit of certain devisees under said will who were then minors, until the said minors should become of lawful age; and it further became and was the duty of said Will, as executor, as aforesaid, upon his removal from said office by the said County

16
Cant. as aforesaid, to account with, and pay
over to said Julius Rosenthal as his successor
in office, and as administrator de bonis non,
with the will annexed of the estate of said
Hays, deceased, as aforesaid, on demand made
therefor, by said Rosenthal, the balance of
money in the hands of said Weis belonging
to said estate.

7. Yet the said defendant Frederick
Weis, did not from the time of making said
writing obligatory by the said defendants and
said Getzler, as aforesaid, and after assuming
and entering upon the duties of his said office,
as executor as aforesaid, keep a large part, or
any part, of the money received by him as
H. Such executor, as aforesaid, loaned out on
securities for the benefit of said devisees
under said will, who were minors until the
said minors became of lawful age, but wholly
neglected and refused to do.

Nor did the said Frederick Weis upon his
removal from the said office of executor, as
aforesaid, account with or pay over to said
Rosenthal as his successor in office, or as ad-
ministrator de bonis non, with the will annexed
of the estate of said Hays, deceased as aforesaid,
the balance of money in the hands of said
Weis belonging to said estate, though demanded

5
was made therefor of him, said Heis by said
Rosenthal, administrator as aforesaid, then
and there to wit: at said County of Cook.

17 And the said plaintiffs, for assigning
a further breach of the condition of said writing
obligatory, say that the said Frederick Heis,
executor as aforesaid, did not well and truly
fulfil the duties enjoined upon him in and by
said will, in this, that he committed a disastous
of the said estate of said George Frederick
Heis, deceased, and misapplied the funds and
property of said estate, and appropriated a
large part thereof, to wit, the sum of two
hundred dollars, to his own use.

And for a further breach of said condition
the plaintiffs say, that the said Heis, executor
as aforesaid, did not pay or deliver to the
persons entitled thereto all the legacies and
bequests contained in said will, so far as the
estate of the said testator would thereunto
extend, according to the value thereof, and
as the law charged him. but on the contrary
thereof, refused and neglected to pay or deliver
a large part of the money in his hands as
executor, as aforesaid, to the persons entitled
thereunder, said will, to wit the sum of
Eleven hundred dollars, to Cora then
Müsel, one of the devisees under said will.

18

By means of which said several premises the said plaintiffs for the use of said Rosenthal, Administrator as aforesaid, have sustained damages to a large amount to wit, the sum of fifteen hundred dollars, by reason of which said breach the said writing obligatory became forfeited, and according to the Statute in such case made and provided an action hath accrued to the said plaintiffs to demand and have of and from the said defendant, survivors of said Andrew Geyler deceased, as aforesaid, the sum of fifteen hundred dollars above demanded.

Yet the said defendants (although often requested *sub du.*) have not as yet paid the said sum of money above demanded, or any part thereof to the said plaintiffs or otherwise, according to the said writing obligatory and conditions, but to pay the same, have hitherto wholly refused and still do refuse - to the damage of the said plaintiffs for the use of said Rosenthal administrator as aforesaid, of Eleven hundred thirty eight dollars & sixty cents, & therefore they bring suit, &c.

For Service
 Ref. Ally

Copy of Bond sued on.

19.

Know all men by these presents. That we, Frederick Weis, Charles Stow and Andrew Getzler of the County of Cook, and State of Illinois, are held and firmly bound with the People of the State of Illinois, in the special sum of fifteen hundred dollars, current money of the United States, which pay must well and truly to be made and performed, we and each of us, bind ourselves, our heirs, executors and administrators jointly, severally and firmly by these presents.

Witness our hand and seals, this twenty ninth day of October A. D. 1846.

The Condition of the above Obligation is such. That if the above bound Frederick Weis executor of the last will and testament of George Frederick Rogers deceased, do make or cause to be made a true and perfect inventory of all and singular the goods and chattels, rights and credits, lands tenements, and hereditaments, and the rents and profits issuing out of the same of the said deceased, which have or shall come to the hands, possession or knowledge of the said Frederick Weis or into the possession of any other person for him, and the same so made do exhibit in the Probate Court

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for the said County of Cook, as required by law: and also make, and render a fair and just account of his doings and doings, as such executor, to said Court, when thereunto lawfully required, and to well and truly fulfil the duties enjoined upon him in and by the said will: and shall moreover pay, and deliver to the persons entitled thereto, all the legacies and bequests contained in said will, so far as the estate of the said testator will thereunto extend, according to the value thereof, and as the law shall charge him: and shall in general, do all other acts which may from time to time be required of him by law. then this obligation to be void, otherwise to remain in full force and virtue.

Attest

Mr. N. Ogden

P. J. Peace

Frederick Wins

Clemens How

H. Metzger

State of Illinois
County of Cook

I Charles B. Farrell
Clerk of the County Court in and for
said County, do hereby certify, the within and
 foregoing to be a true copy of the bond given
in the settlement of the estate of George Frederick

Legs deceased, and that the same is now
in file in my office.



In testimony whereof I hereunto
set my hand and affix the seal
of said Court at my office in
the City of Chicago, this eighteenth
day of January A. D. 1860.
C. B. Samwell Clerk

21.

And afterwards to wit, on the 20th day of
December in the year aforesaid, the said day
being one of the days of the December Term
of said Court, the following among other
proceedings were had and entered of Record in
said Court, to wit:

The People of the State of Illinois
vs. of Julius Potentia, Administrator
Illinois now, with the will annexed of the
Estate of George F. Heym, Deceased
Frederick Weiss & Co. German Store Attachment
This day comes the said

22.

plaintiff by George Scoville their attorney
and due personal service of the writ issued in said
cause having been had on the said defendant
Frederick His only and he being three times
solumbly called in open Court does not nor does
any person for him, but herein he makes default
which is on motion ordered to be taken as on hereby
entered of record. Wherefore the said plaintiffs
ought to have and recover of the said defendant
Frederick His impleaded with Clemens Stow for
use and benefit of Julius Brentnall administrator
de bonis non with the will annexed of the estate
of George S. Heym deceased damages sustained
plain by reason of the premises.

And thereupon reference is had to the Court
to assess damages herein hereafter.

And afterwards, to wit on the 8th day of
February in the year of our Lord one thousand
eight hundred and sixty one, there was filed
in the office of the Clerk of said Court, a cer-
tain publication notice in the words & figures
following, to wit:

7.
Publication Notice
State of Illinois,
County of Cook } Superior Court of Chicago
December Term A. D. 1860.
The People of the State of Illinois for use of
Julius Brenthal, Administrator de bonis non
with the Will annexed of the Estate of George
S. Hays deceased, vs. Frederick Weiss and
Clemens Stos, survivors of Andrew Getzler,
deceased. Attachment.

23.

Public Notice is hereby given to the said
Clemens Stos, that a writ of Attachment
issued out of the office of the Clerk of the Su-
perior Court of Chicago, dated the 9th day
of November, A. D. 1860, at the suit of the said
People of the State of Illinois, for use, &c.
and against the estate of the said Clemens
Stos, for the sum of Eleven Hundred and ninety
eight and 60/100 dollars, directed to the Sheriff
of Cook County, which said writ has been
returned executed.

Now therefore, unless you, the said Cle-
mens Stos, shall personally be and appear
before the said Superior Court of Chicago
on or before the first day of the term thereof
to be holden at the Court House, in the City
of Chicago, on the first Monday of December
A. D. 1860, give special bond and plead to

the said plaintiff's action. judgment will be entered against you, and in favor of the said plaintiff. And so much of the property attached as may be sufficient to satisfy the said judgment and costs, will be sold to satisfy the same.

24,

George Scoville
Plff. Atty.

H. Kimball Clerk

This Certifies that the Appended Publication Notice has been published in the "Chicago Daily Democrat" a Newspaper printed and published in the City of Chicago County of Cook, and State of Illinois, for the full space of thirty days consecutively, commencing with the 29th day of November 1860. and ending with the 29th day of December 1860. and that I have received \$15 Dollars for publishing the same.

C. L. Reed Publisher
for Proprietor.

And afterwards to wit, on the 8th day of February in the year of our Lord one thousand eight hundred sixty one, said day being one of

the days of the February Term of said Court
the following among other proceedings were
had and entered of record in said Court to wit:

The People of the State of Illinois
vs of Julius Rosenthal Administrator
de bonis mori. with the will annexed
of the Estate of George S. Heyms deceased

25- ⁱⁿ Frederick Heis ^{Attachment} vs Clement Stow

And now again comes the said Plaintiff
by George Scoville Attorney and does present
service of process of summons issued in said
Cause having been had on the said Defendant
Clement Stow and he being three times solemn-
ly called in open Court comes not, nor does
any person for him, but herein he makes
default, which is on motion ordered to be
taken, and his default is hereby entered of
record, herein against him.

And afterwards to wit, on the 11th day of
the month of June last aforesaid, the said

defendant. Clement Stoe by his Attorney
filed in the office of the Clerk of said Court
his certain plea in the words of figures fol-
lowing, to wit.

26.

In the Superior Court of Chicago
July Term A. D. 1861.

Clement Stoe impleaded in with
Frederick Heis

vs
The People of the State of Illinois
wherein to the use of Julius Rosenthal
Administrator of the Estate of George Frederick Heis deceased

And the said defendant Clement
Stoe by Arthur W. Windet his Attorney, comes
and defends the wrong and injury when &c. and
says that he does not owe the said sum above
demanded of him, or any part thereof in
manner and form as the said plaintiff
has ^{alleged} thereof complained against him, and
of this he puts himself upon the Country &c.

Arthur W. Windet
Attorney for Stoe def

State of Illinois
Cook County ss.

In the Superior Court of Chicago
Feb Term A.D. 1861.

Oleman Stroed impleaded with
Frederick Heis

vs.

27.

The People of the State of Illinois
whom to the use of John Rosenthal
Administrator with the Will annexed
of George Frederick Heis

Charles Stroed being first duly sworn
says that he is the agent of Oleman Stroed
and his attorney in fact, that said Oleman
Stroed resides in the State of California, and
for the last five years has continually resided
in said State of California, and not in this
State, that this affiant is acquainted with
the facts and circumstances of the above
intituled case - and he verily believes that
said defendant has a good defense thereto upon
the merits.

Subscribed and sworn to
before me this Eighth day
of Feb. A.D. 1861.

Chas Stroed



Conrad L. Siehoff
Notary Public

And afterwards to wit. on the 11th day of February
aforesaid in the year aforesaid. said day
being one of the days of the February Term of
said Court the following among other proceedings
now had and entered of record in said Court
to wit:

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The People of the State of Illinois
vs of Julius Brentnall Administrator
de bonis non with the will annexed of
the Estate of George S. Hays deceased
^{vs} Attachment
Frederick W. Clemens Store

And now again come the said plaintiffs
who are for the use of Julius Brentnall adminis-
trator de bonis non with the will annexed
of the Estate of George S. Hays deceased by
George Sewell their Attorney and the said
Defendant Clemens Store by A. W. Windett his
Attorney all comes and upon agreement of the
parties made and had in open Court. it is
ordered that the default taken and entered
against herein against the said defendant
Clemens Store be and is hereby set aside and the
cause is thereupon submitted to the Court for trial
on the issues joined herein on plea of the said defendant

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Charles Sted implored with the said defendant Frederick Weiss defaulted herein, without intervention of a jury, and the Court was here after hearing evidence and arguments of Counsel and being fully advised in the premises finds issue for the said plaintiffs on the issues joined on plea of the said defendant Charles Sted and assesses their damages for use aforesaid against both of the said defendants to the sum of one thousand two hundred and seven dollars. And thereupon the said defendant Charles Sted by his Attorney A. H. Kindeth submits his motion for a new trial in said Cause, which motion for a new trial is overruled by the Court, to which ruling of the Court the said defendant thereupon excepts, and enters his exceptions. Wherefore the said plaintiffs for the use aforesaid ought to have judgment entered on the finding of the Court as aforesaid.

Therefore it is considered that said plaintiffs do have and recover of and from the said defendants for the use and benefit of Julius Rosenthal Administrator de bonis non with the Will annexed of the estate of George F. Heyne deceased, their damages of One Thousand two hundred and seven dollars, in form aforesaid by the Court law found and assessed together with their costs

And Charges in this behalf to be paid ex. and thereof
have execution, and that an order issued for sale of
the property attached.

31

And thereupon the said defendant Clements
And having entered his exceptions from an ap-
peal herein to the Supreme Court of the State of
Illinois which is allowed to him upon condition
that he file his appeal Bond in the penalty of
fourteen hundred dollars with security to be
approved by a judge of this Court and to be
filed with his bill of exceptions during the con-
tinuance of this term of the Court.

And afterwards, to wit, on the 21st day
of February in the year last aforesaid there
was filed in the Office of the Clerk of said
Court, a certain Bill of exceptions in the
words of figures following, to wit:

In the Superior Court of Chicago Sub Term A. D.
The People of the State of Illinois
vs. the use of Julius
Rosenthal, Administrator &c.

1861
Bill of
Exceptions

Clements And impleaded with Frederick Heising

Be it remembered that on the Eleventh day of February A. D. 1861. the above entitled Cause came on to be tried, and was tried by the Court without a jury, a jury trial being waived by the parties -

31.

And to sustain the issue on the part of the plaintiffs in said Cause the Attorney for the Plaintiffs George Scoville Esq offered in evidence a certain Bond, purporting to be signed by Frederick Weiss, Andrew Gitzler and Clemens Sted, which Bond is in words of figures following, to wit:

"Know all men by these presents that we Frederick Weiss, Clemens Sted and Andrew Gitzler of the County of Cook and State of Illinois, are held and firmly bound unto the People of the State of Illinois, in the penal sum of fifteen hundred dollars, current money of the United States which payment well and truly to be made and performed, we and each of us bind ourselves, our heirs, executors and administrators jointly, several, and firmly by these presents.

Witness our hands and seals this twenty ninth day of October A. D. 1846.

The condition of the above obligation is such, that if the above bound Frederick Weiss Executor of the last Will and Testament of George Frederick Weiss deceased, do make or cause to be made a true and perfect inventory of all

32.

and singular the goods and chattels, rights
 and credits, lands tenements and hereditaments
 and the rents and profits issuing out of the same
 of the said deceased, which have or shall come
 to the hands of the ~~deceased~~ executors or admin-
 istrators of the said Frederick Wap, or into the
 possession of any other person for him, and the
 same so made do exhibit in the Probate Court
 of the said County of York as required by law:
 And also make and render a fair and just
 account of his doings and doings, as such
 executor to said Court, when thereunto lawfully
 required, and to well and truly fulfil the duties
 enjoined upon him in and by the said Will: and
 shall moreover pay, and deliver to the persons
 entitled thereto, all the legacies and bequests con-
 tained in said will, so far as the estate of the
 said testator will thereunto extend according to the
 value thereof, and as the law shall charge him.
 And shall in general do all other acts which
 may from time to time be required of him by
 law. And this obligation to be void, otherwise
 to remain in full force and virtue—

Attest

M. D. Ogden
 P. J. Pence

Frederick Wap (Seal)
 Henry Sted (Seal)
 A. Getzler (Seal)

32.

to the admission of which said Bond as evidenced in this case the said defendant Stow by Arthur W. Winick his Attorney objected, but the Court overruled the objection, and admitted the said Bond in evidence, and the said defendant then and there accepted to the opinion of the Court in overruling his objection and in allowing the bond to be given in evidence - And further to sustain the issue on behalf of the Plaintiffs their said Attorney offered in evidence a certain paper purporting to be a certified copy of a certain order and proceeding supposed to have taken place in and to have been made by the Cook County Court, which paper is in words and figures as follows. To wit:

June 20th 1836

County Court of Cook County June Term
Present Hon Henry L. Archer. Judge
Charles B. Samuel. Clerk

Be it remembered that on this day the following proceedings were by and before said Court had and entered of Record. to wit:

George George
Estate of }

Allowance of Claims & Executors Account
This day comes into Court Frederick

34

Wip. Executor of the last will and Testament
of George F. Wynn, deceased, by his attorney C.
R. H. Hull. and also comes George Scoville
appointed to defend the Estate of said deceased
against the claim of said Wynn and it is

Ordered that said claim be allowed.
classified and paid as follows to wit:

Class Number four

Frederick Wip of	\$152.00
Said Executor also renders his account as such Executor.	
Showing receipts amounting to	\$1841.60.
and disbursements amounting to	\$257.82

which having been examined and approved is ordered
to be recorded. and it is further ordered that the
matter of citation in this Estate be dispensed at
the cost of said Executor. and it appearing to the
Court that said Executor has paid all claims
legally established against said Estate. it is ordered
that he pay over to the devisees under the will
of said deceased or their heirs the balance of said
Estate shown to be in his hands.

H. L. Rucker Judge

State of Illinois
Cook County

I Charles B. Farrell Clerk of
the County Court in and for said County do
hereby certify the foregoing to be a true transcript.

from the records of the said Court.

In testimony whereof I hereunto set my hand and affix the seal of said Court at Chicago this 11th day of July A. D. 1860.

True

C. B. Farwell Clerk

35.

to the giving of which in evidence the said defendant ~~stated~~ by his said Attorney objected, but the Court overruled the objection and admitted the same in evidence, and the said defendant by his said Attorney then and there objected to the said opinion of the Court in overruling said objection, and in allowing the same to be given in evidence.

And further to sustain the issue on behalf of the Plaintiffs their said Attorney offered in evidence a certain paper purporting to be a certified copy of a certain order and proceeding supposed to have taken place in and to have been made by the Cook County Court which paper is in error and figures as follows to wit:

State of Illinois
County of Cook J. Now before the Honorable
William S. Barron Judge of the County Court
of the County of Cook, aforesaid. at a term of

Said Court began and held at Chicago in the said County
on the third Monday of March, being the
19th day of said Month in the year of our
Lord One thousand Eight hundred and sixty
and of the Independence of the United States
of America the Eighty fourth the same
being the March Term of said Court.

36.

Present Honorable William S. Baron Judge
John Gray Sheriff
Charles B. Farwell Clerk

Be it remembered that on the nineteenth day
of March in the year of our Lord Eight hundred
and sixty the following proceedings
were had and before said Court read and entered
of Record. To wit:

George S. Heggs } Removal of Executor and appointment
Estate of } of Administrator de bonis non.

It appearing this day to the Court that
Frederick Weiss, Executor of the last will and
testament of George S. Heggs deceased, has failed
and neglected to respond to the citation to him
heretofore issued. It is ordered that an attach-
ment for the said Frederick Weiss issue accordingly.
And now afterwards comes the said
Frederick Weiss upon the aforeaid attachment

in Custody of Daniel S. Wood Deputy of
John Gray Sheriff of Cook County, and it
is adjudged that said Heip pay the costs of
this procedure, and it is ordered that upon the
payment of said Costs the said Frederick Heip
be discharged from said Attachment.

And it appearing to the Court that
said Executor has mismanaged and neglected
the Estate of said deceased, and has misapprop-
riated the assets of the same, it is ordered that he
be removed from his office as such Executor.

37.

And now comes Julius Rosenthal and
makes application for administration de
bonis non with the will annexed of said Estate.
And it appearing to the Court that said Estate
has not been fully administered, and that
said Rosenthal is a suitable person, to whom
to grant such administration, it is ordered
that administration de bonis non with the
will annexed of the Estate of George F. Heym
deceased, be granted to Julius Rosenthal upon
his entering into Bond in the penal sum of
Twenty Thousand Dollars payable and
conditions as the Law directs.

And the said Julius Rosenthal having
produced the Bond with George Scoville and
Adolph Loeb, as his security which is approved
by the Court, it is ordered that letters of ad-

administration de bonis non with the will annexed
referred to him accordingly.
(Signed) William D. Barrow Judge

State of Illinois
County of Cook
I Charles B. Farwell
Clerk of the Cook County Court in and for
said County do hereby certify that the foregoing
is a true and correct transcript from the
Records of my office.

In testimony whereof I hereunto
set my hand and affix the Seal of said Court
at the City of Chicago this 19th day of September
A. D. 1886.

Seal

C. B. Farwell Clerk

to the giving of which in evidence the defendant
by his said attorney objected - but the Court
overruled the objection and admitted the same
in evidence. And the said defendant by his
said attorney then and there accepted of the
said opinion of the Court in overruling his
objection, and in allowing the same to be
given in evidence.

It was admitted by the defendant's
attorney that a demand had been made

by Rosenthal on Writ for the payment of the money claimed in this suit before the commencement of the present action. It was also further admitted that the following letter of Administration had been granted by the Cook County Court to said Rosenthal before the commencement of this suit.

39. State of Illinois }
Cook County } Set

The People of the State of Illinois to all whom these Presents shall Come Greeting:

Know ye that whereas George S. Wynn of the County of Cook and State of Illinois died intestate, as it is said, on or about the twenty second day of August A. D. 1846, having at the time of his deceased personal property in this State, which may be lost, or destroyed or diminished in value, if speedy care be not taken of the same, and whereas Frederick Weip Executor of the last Will and Testament of said deceased has been removed from his office, leaving said Estate not fully administered, & the said therefore that said property may be collected and preserved for those who shall appear to have a legal right or interest therein. We do hereby

appoint Julius Rueschthal of the County of Cook and State of Illinois administrator de bonis non with the will annexed of all and singular the goods and chattels, rights and credits, which were of the said George J. Heym at the time of his decease, with full power and authority to secure and collect the said property and debts wherever the same may be found in this State, and in general to do and perform all other acts which now are or hereafter may be required of him by Law.

Witness Charles B. Farwell Clerk of the County Court of said County, and the Seal thereof, at the City of Chicago, in said County, this nineteenth day of March A.D. 1864.



C. B. Farwell Clerk
of the County Court.

And this was all the evidenced on the part of the Plaintiffs.

No Evidence was offered or given by defendants. The Court found for the Plaintiff the sum of \$1207. against the said defendants Heym and Son. Defendant Son by his said Attorney moved for a new trial.

The Court overruled the motion for a new trial.

and rendered judgment for the plaintiff
to which ruling and opinion of the Court
in overruling said motion for a new trial
and in not granting a new trial said that
by his said attorney then and there accepted,
I am prayed that this his Bill of Exceptions
might be allowed, signed and sealed by the
Court which is accordingly done.

Grant Goodrich

41.

Above is correct I think

Geo Scoville

Plff's atty

And afterwards to wit on the 28th day
of the month & year last aforesaid there was
filed in the office of the Clerk of said Court
a certain Power of Attorney and appeal bond
in the words & figures following to wit:

Copy of Power of attorney

42

Know all men by these presents that I
Clement Stone of the City and County of San-
Francisco, State of California, by these presents
do make, constitute and appoint Charles
Stone of the City of Chicago in the County
of Cook, State of Illinois, my true and law-
ful Attorney for me and in my name, and
to my use, to ask, demand, sue for and receive
all and every sum of money, debt or demand
that may be due me, or may become due me,
by and from any person ~~and~~ persons whatever
in the State of Illinois, and out receipt thereof
to make, seal and deliver acquittances or other
sufficient discharges for the same; And further-
more to sell and convey to each person or persons
and for such sum or sums of money as to my
said Attorney shall see proper, all and
singular, those pieces, parcels and lots of land
of which I may be possessed or in which I
may have any claim or interest, lying in
the State of Illinois, or any other State in the
Union and upon such sale or sales, convenient
and proper be or, with such covenant or cove-
nants of warranty, as to my said Attorney may seem
proper in due form of Law, as my due or dues, to make,
seal, deliver and acknowledge, and further more to enter
into all lands of which I may be possessed in said
State of Illinois or any other State in the Union and

into every part or parcel thereof, and peaceable
possession and enjoyment thereof in my name
and to lease said premises or any part thereof, and
for me and in my name to sign, seal or deliver
leases or other instruments of writing, and for me
and in my name to accept and receive all and
every sum of money which shall be coming due
to me on account of such selling or letting, and
furthermore to transact all my business in the
43. State of Illinois generally, whether the same
be herein specially mentioned or not, and for
me and in my name and stead to act as I
might do, if personally present, giving and grant-
ing to my said Attorney full power and author-
ity to do and perform all and singular the acts
necessary to be done and performed, hereby rat-
ifying and confirming everything which my said
Attorney shall lawfully do or cause to be done
by virtue of these presents.

Witness my hand and seal this Eleventh day of
June 1853.

Clement Stone (S)

State of California
City & County of San Francisco

Be it remembered that
on this the Eleventh day of July in the year of our
Lord One Thousand Eight Hundred and Fifty Three

in the City & County aforesaid before me S. L. Jones
a Commissioner residing in said City, duly appointed
as a Commissioner by the Governor of the State of
Illinois, to take the acknowledgment and proof
of the execution of Deeds and other instruments
of writing when sent, to be used and recorded
in said State. personally appeared Clement Stone
who is personally known to me to let the pen on the
name is subscribed to the foregoing Letter of Attorney
as having executed the same, and acknowledged
that he had executed the same, for the uses and
purposes therein expressed.

In Witness Whereof I have hereunto set
my hand and affixed my official seal as
Commissioner of the said State of Illinois
at my office in the City of San Francisco and
State aforesaid. this the Eleventh day of July
A. D. 1833

S. L.

S. L. Jones
Commissioner of the State of
Illinois for the City & County
of San Francisco.

Know all Men by these presents, that we
Clemens Stow, Charles Stow, Charles Litz and
Arthur H. Windett of Chicago in the County of Cook
and State of Illinois are held and firmly bound
unto the People of the State of Illinois wherein
to the use of Julius Rosenthal, administrator de
bono non, with the will annexed of the estate
of George Frederick Heym deceased, in the sum
of fourteen hundred dollars lawful money
of the United States, for the payment of which
well and truly to be made, we bind ourselves
our heirs, executors and administrators severally
and jointly by these presents.

Witness our hands and seals this fourteenth
day of February in the year of our Lord
One thousand and Eight hundred and sixty one.

The Condition of this obligation is such
that whereas the said People of the State of
Illinois to the use of Julius Rosenthal adminis-
trator as aforesaid. did on the Eleventh day
of February A. D. 1861 in the Superior Court
of Chicago in the County and State aforesaid
and of the February Term thereof A. D. 1861
recover a judgment against the above bounden
Clemens Stow impleaded with one Frederick
Weiss for the sum of Twelve hundred and seven
dollars and cents beside costs of suit

from which said judgment of the Superior Court
the said Clemens Store has prayed for and obtained
an appeal to the Supreme Court of said State.

Now therefore if the said Clemens Store shall
duly prosecute his said appeal with effect and
moreover pay the amount of the judgment costs
interest and damages rendered against him
46. in case the said judgment shall be affirmed
in said Supreme Court, then the above obli-
gation to be void, otherwise to remain in full
force and effect.

Witness my hand and entered into before me
at my office in Chicago this
28 day of February A.D. 1861.

and approved by me
Grant Gobovich
Judge of the Superior
Court of Chicago

Clemens Store

by Charles Storck

Attorney in fact

Charles Store

Arthur H. Windett

Seal

Seal

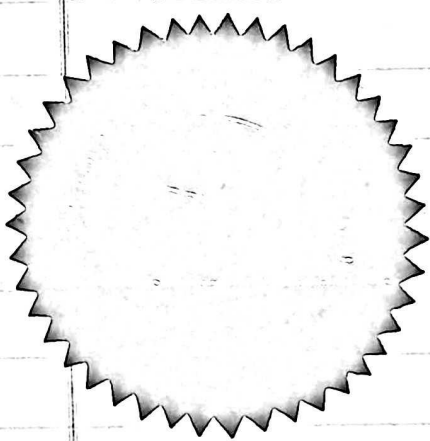
Seal

Seal

State of Illinois
Cook County of J. Walter Kimball

47.
Clerk of the Superior Court of Chicago
within & for the County of Cook & State of
Illinois. do hereby certify the foregoing to be
a full, true and complete transcript of all
the papers on file in my office and proceed-
ings & judgments entered of record in said Court.
together with the bill of exceptions and appeals
brought in a certain cause wherein the People,
for the use of Julius Rosenberg Administrator
do bring on & was complainant & Clement
Stow & Frederick their defendants.

Witness my hand and seal
of said Court at the City of
Chicago in said County, the
18th day of March A. D. 1861.
Walter Kimball
Clerk



48

In the Supreme Court of the State
of Illinois,

Clemens Gust

Thos G. & S. D. Smith

implicated with Fred. Meis

April 2nd 1861.

4 April 1941

The Reader of the Fort of
Illinois, who see to
the use of Holies Resonant
Appellu.

And now comes the State's Appellant,
Clemens Stone, by his Attorney Arthur
N. Winchell. And says that in
the record of proceedings and judgment
of the Court below in the said cause,
there is great and manifest error
in this Court ~~that~~ ^{seeing} that the Court gave judgment
against said Appellant below and in favor
of said Plaintiff below, and that the Court
overruled the motion for a new trial;
And said Appellant avers that there
are in said Record of Proceedings and
proceedings direct & strong and
manifest errors therein apparent.
And that said judgment should be
reversed and set aside and

Ernesting to Jones -

April 1880. R. H.

Arthur M. Vinsett
The full of record
with appeal.

The People of the State
of Ill. do hereby

^{do}
Stow & Wain
From credit.

Just 1/25/22 Rec^d three fms
of A. H. Wendt & Co
H. Kimball CND

48.

In The Supreme Court of the
State of Illinois -
Third Grand Division.
April Term A.D. 1861.

Clement Stone, who is
imprisoned with Frederick
Preis, ~~et al~~ Appellants.

The People of the State of
Illinois, who sue to
the use of Julius Roentgen
Administrator de bonis non
with and assumed of Geo.
Frederick Heyer decedent.
Appellees.

And now comes the said Appellant
Clement Stone, by Arthur W. Mudgett
their Attorney - and says that
in the Record of Proceedings, and
Judgments of the Court below, in
the said above entitled Cause,
that is great and wronged even
in this Court.

The Court in allowing
the given in Evidence the Certified
Copies of the orders and proceedings

of the Cook County Court. as
stated in the Bill of Exceptions.
see pages 32.33.34.35.36.37. of the Record
and also pages of the ab-
stracts.

219.

2 The Court erred in admitting
in Evidence the Supposed Bond
without proof of its execution
by Gutzler, or of his death.

3 The Court erred in finding
for the Plaintiffs below, and
against defendants below.

4 The Court erred in overruling
the motion for a new trial.

5 The Court erred in rendering
Judgment for the Plaintiffs
below, and against the
defendants below in manner
and form as shown by the
Record.

6 And with Appellant further
aver, that in said Record
of Judgment and Proceedings

50.

in said above entitled cause,
There are other direct
and manifest errors in law.
wherefore he prays that said
judgment may be reversed
and set aside.

Arthur N. Mudgett
Atty for Defendant.

March 26. 1861.

In Public Court Courtroom

Open 2 1/2

Chas Scully
for Plaintiff

In the Supreme
Court of the
State of Illinois

C. Store

vs

The People

Record and
Assignment of
Error.

Filed April 16 1861

L. Deland

for Clerk

A. B. Smith

for Appellant