13499

Supreme Court of Illinois

Sto**X**e.

VS

People.

STATE OF ILL INOIS, SUPREME COURT, Third Grand Division. No. 204

Case 204 Sufreme Court belevens Store, hufsleaded tel appellant. The People of the State of lelinois, who sue for use to appellees. The applices in this cause, by Geo. Seone their attorney, come and move the court to dismiss the appeal in this case for want of a sufficient appeal bound. 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 acto, a copy of which is annexed to said bond, does not authorise said atty to execute the same. The general expression in said power of atty cannot be extended beyond the scape of the particular

powers delegaters, and the special

howers do not enlace the execution of this bond. Seoulee att, for appellers.

Supreme Comb Clamens Store The People, te. motion to dist Filed April 17.1861 d'deland Michen OVERTURE

Scorr & 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

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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.

- 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.
  - 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.

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-

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

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.

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

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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.

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.

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 devisces 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

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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.

- Copy of bond sued on set out at length, same as that given in evidence 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 affidavit of merits.
  - Default, as to Stose, set aside by order of court, upon agreement of 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 defendants, 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 property attached.

30 property a

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.

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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:

. "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.

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RECORD

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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.

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, ss.

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.

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.

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 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.

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.

- 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.
- 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.

Scorr & 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.
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 III. 285-8. Fournier v. Faggott, 3 Scammon R. 347. Stephens v. Sweeney, 2 Gilman R. 347. Walcott v. Holcomb, 24 III. 331. Brown v. Smith, 24 III. Rep. 196-198.

### ARTHUR W. WINDETT,

Attorney, and of Counsel with Appellant.

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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.

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RECORD PAGE.

13

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

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.

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

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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

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.

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

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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.

- Copy of bond sued on set out at length, same as that given in evidence 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 affidavit of merits.
  - Default, as to Stose, set aside by order of court, upon agreement of 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 defendants, 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 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.

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

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:

"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.

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.

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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.

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, ass.

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.

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.

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 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.

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.

- 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.
- 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.

Scorr & Co., Printers, corner Clark and South Water Sts., Ohicago.

### 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.
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.

Store vo The Profile Obstract

Filed afr. 29-1861 L'Laburd Clark United Waher of america Take of Alimin Cook County of Hen before the the Honorable the Judges of the Superior Court of Chicago. million and for the County of Cook and State of Allinois, at a regular term of the Superior Count of Chicago, begun and holder at the Court House In the City of Chicago in said County and State, on the First monday being the South day of February in the gent of our Lord Cightles hundred and lity one, and of the Sadependence of the United States of Unerica the Sight Film Secont the Honorable John M. Wilson Chief failies Of the Superior Couch of Chicago Van Higgin The Grant Governich Judger Carlos Mayour Proseculing Colloring Anthony C. Alang Sheriff of Cook County Allut 1 Haller Nimball Clerto.

Ide it remembered that heretofore to mit, on the gh day of Wordenber in the year ofour Lord and thous and eight hundred and listy there mus files in the office of the below of the Superior Count of Micago, a feel and Office with for attachment, in the world Higures follow ing, to mit! Thato of Allinois Jenge Devillo bring duly Crist Country 3 S. Sword sail that he is allowing for fulling hour that, administration de bonis non, with the mills annexed of the Estato of George Frederick Hegger, decensed: That Frederick Weis, formerly executor of said Estato, but lately removed from the office of Executor, as afores air, by the County Country Cook County, State of Illinois, and Clement Stree, Survivors of the and Gelyler, decented, and firstly indebled and lindle to the Scaple of the State of Willings, for the use of sain feeling Hosenthal, aministrator, as afores and, whow the afficial bond of suis Heis. as executor, as afores and, buy reas on of the brenches of the conditions thereof legition their as executor, as afores aid, and from a levastarit by him of said Estato, in the sund of Eliver humored and much eight Wollard and tity cents, bing \$ 950. balance in the human of said Their, as Accorded as

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each of them did bin themselves, their hend. Hecutor and administrators, jointly, fererally any frimly by these presents, with a Consilion thereme de written that if the daiso Frederick Mis, Wecutor of the last will and testament of George Frederick Heym, decenter, disconnile or cause to be made a true and perfect insent on of all and lingular the gones and Chattels, rights and Creoits, Mande, tenements and hereviraments and the rents and profits if eving out of the dame. of the said deceased, Jain George Frederick (worm, meaning / which has on should come to The hands. possession or Knowledge of the dain Frederick Mis, or into the prosession of and other fune for him, and the come to made diw while in the Irobato Couch for the Pain County of Cook, as required by land, and alex make and render a fair and fich account of his actings and doings as ench Ofecution to daise Court when there unto lowfully required: and to well and truly fulfit two duties informed upon him in and buy the said Will; and should moreover pay and deliver to the persons intitles thereto all the legacies and begande Contained in said milo tofar as the listato of the said testator would thoumt Glad, according to the Value thereof, and as the law should Change him: and should in

general de all other acts which might from time to time be required of him by law. Then the sain oblig ation was to be void, otherwise to remain in full force and virtue. And afternands, to mit, on the 10th day Allprib a. O. 1859. before the Commencement of this fait: the said Andrew Getyler defented This life. Chow the plaintiffs and that apout the Heation of said bourd or writing obligatory, to with, on the trenty ninth day of Octaber 13. 6. O. 1846. the Dais Ired inch Meis, mus duly appointed Weentor of rain last will and testament of said George Frederick Hogen, decensed, by the Orbato Court of some County of (ook, and entered upon the duties of dain office: and that there Came unto the hands and preses in ofsain Mais, as Inch Gentor, a lange amount of many, to mit, the flow of faintien him are dollars and that afterwards to mit, ou the Doth day of Jamel a. O. 1856. on a Restlement of the demands against the Cerato of sain Kayon deceased in the County Count of Cook lang. there my found to be hi the hand of air Mis as such executor a large sum of money. to mit, Eleven from drent and three doll d. J. and Leventy eight cents. the bal and oftain

whate of Anis Hopm decenses, which by the dain County Court, the sain Was, Hearton as afores airo, mas then and there ordered to pay over to the deviser under the will of Hair decenser, (Seino Georgo Frederick Hogym) 14 menning/, or their him. that afterware to mit, on the 19th day of March a. O. 1860 tomb, at said Churchy of Cook and before the said Men, executor as afore aid had pain over to the devisees inter the will of said Hayon, decensed, or to their heis the sain from of many, last afores and, being the balance in his hands, in Weentor as afores aid, such proceed mings here has and entered ofreers in the Said Country Court of Cook County, that it was ordered by, Sain Cant, think he sain Men he, and he trus thew and there by the order and judgment of paid County Coult in the fremises, removed from his office, as know excention as afores and. and the plaintiffs further are that afterwants, to mit, out the day and zent Each afores aid, to mit, at said County of Cook by the order and jungment of sain County Court of Cook County, asministration de bom's non, with the still annexed, of the estato of sain George Frederick Haym decense D.

Am granted to Julius Resenthab, afores and. and letter of doministration in prisen and of such order and fing much of said County Court, went there a from, then and there duly ildred to said Assenthab lup faire County Court. And the plaintiff further over that said A Kenth ab then and there accepted and in teres upon the duties of the said office of arm instrator, as afores aid, of Dais whato, em del and in prenen and of faid order and judy ment oftaid County Court. and hath there whithert been such asminis trater de bomis now, as afores and. and the plaintiff further and that in and by the last will and test ament of air George Frederick Mayor, deceased, and according to the true intent and meaning thereof. His Vaid Trederick Hais Weenton an afores ain. was directed to and it became his they as Inch Weentor to Rup a large part. I wish by hun dred dollar of the money to received by him as afores and, louned out of december for the benefit of cutain devisees unter onis Will who were then minors, while the said minor should be come oflawful age; and it futher became and min the duly of Paid How, an execution, as afores and of his removal from caro office by the said County

Cant as afres and, to account mile, and fray one to said feeling Rosenthab as his successor with the will annual of of the estate of said A sym, de censed, as afores and. on demand muso therefor by sain Rosenth ab, the balance of moneys in the hands of said His belonging to said letato. Her the dais defend and dreverick Their down not from the time ofmaking said writing obligatory by the said defend ant and Jain Getzler, as ufores and, Ones after apenning and entering upon the duties of his Fair office, as executive as afores on, Kup a large frant or my frails of the money received by him as Ench yeentor, as africain, lound out on Lecurities for the benefit of vain derised In der said will, who were minore until the Said minors became oflawful ago, but whilly neylected and refused ento do. Nor did the said Arederick Wis whow his Umount front the said office of Weentor, as afores airo. account with or pay over to daid Rosenthal as his encepor in office, or as ar ministrator de brui now, with the will amuged of the estate of said Haym, decensed as aforeing. two bal ince of money in the hours of suit His belong ing to faid istato, though demant

mu made therefor of him, dain Werd by dans Rosenthal, abministrator as afores air, then and there tomit: at sain County of Cook. Und the said plaint iffs, for assigning a further brench of the Condition of said miting obligatory, say that the onis Tressics Wars, Wenton as afores aid, this out well and truly fulfil the duties enjoined upon him in and by dais will, in this, that he committee a devastant of the said estate of said George Frederick (ago, deceased, and mis applied the fruit and hoperty of sain whate, and appropriates a lange part thereof. to mit, the sens of thicker Minu and delland, to his in he. Ohna for a further breach offair Contition to plaintiff day, that the said heir, Secution an aforer airo, diso not pay or deliter to the flurar intitles thereto all the legacies and bequests contained in said will, sofar as the letato of the sain testator, would theremit of lend, according to the value thereof, and as the law charged him. but out the contrary thereof refreed and neglected to frant or deliver a large fact of the money in his home as Weelstor as afores aid to the persons withterd, thereto un der dano will, to mit the seme of Elenen hundred dolland to Dorother Musel , me of the deviser unow paid will.

In means of which pain several frem ises the dain plaintiffs for this are foring Resenthab, a ministrator as afores air. have pust ained damages to a large am ounts to with, the Senw of fifteen him ared dollars, by reason 18 of which said brenches the said witing obliga Tong became forfeited, and according to the Statuto in fuch case made and Inovided an action hath account to the sais plaintiffs to dem and and have of and from the our defendant lurisons of said Anoren Getyler deceased, as afores air. the fund of fiftien hundred dollars above dem and en. Our the said defend anti (although often requested sot do.) have not as ger pain The said from of money above demonter. or any frank thereof to the vain plantiff or otherwise, according to the said miling oflightony and con ditions, but to pay the Game, have hitherto wholly refused and 1 ttill do refuse - to the damage of the said plaintiffs for the use of sois Mosenthal armin istration as afores aid of Cleven I tumbred ominh, eight Collar t kit by cents, therefore they dring dut, te. Ger Seville Peffi ally

Copy of to and Sued on. How all men by these presents. That we. Judenick Mir, Commen Stow and andrew Getzler of the County of Cook, and State of Illinois are held and firmly bound with the Scople of the State of Allinnis, in the freund hum of fiftien hundred dollard Current money of the United States, which payment well and truly 19. to be made and performed, we and ench of ut. buil meetres, and heirs, executors and atministrators jointhy, severally and findly by there Witness on hand and Leals, this through minth day of October a. D. 1846. The Condition of the above Obligation is ench. That if the above bound Irederick His executor of the last will and testament of George Frederick Mozni deceased, du make or course to be made a truo and perfect inventory of all and lingular the goods and Chattels, rights and presit, land Unements, and fun out aments, and the rents and hofits issuing ont of the same of the said decenter, which have or shall come to the hours possession or Knowledge of the said Inederick Their or note the presiezion of any other person for him. and the Jume to made do of hibit 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 actings and drings, as luch executor, to tain Court. when theremoto lawfully regimed, and to well and truly fulfil 20 the dutie enformed whom him in and by the said will: and shall moreover pay, and deliver to the persons entitled thereto, all the legacis and bequests contained in sain will, sofar as the whate of the said testator will theremite Attend. according to the value thereof, and as the law shall change him; and shall in general, do all other acts which may from this obligation to be ario, reherviso to remain in full fores and virtue. Mr. D. Ogden Comens Stow Finds
P. J. Rence A. Getzler Finds County of Cort & Of Charles 18. James Clark of the Country Count in and for isthe dettement of the Estato of George French

Agyni Accensed, and that the same is most In testimony whereof I havento set any hand and affect the fent oftano levet at my office in Sine I the City of Chicago this lightwenth day of Samen U. S. 1860. 6. 13. Farwell (Suk) 21. And afternands to mit on the 20th day of December in the gent aforesaid the said day being one of the days of the December Jedin priced ings werd had and entered of Rueva in Sand Couch, to mit: The Serple of the State of Selmins ne of Julia Robenthal. Doministrator de blows now, with the will amend of the Certato of George F. Hogan Decense D Surenick Heir 12) Comment Stores Mi day Comes the dand

plaintiff by George Sevillo Their Morney and dulpur onne Service of the with ifined in duid Canel having been had on the Baiso defendant In wick this only and he hing throw times Irlemmy Called in open Court dennes out norders my frenow for him, but herein he ometer defent which's on on otion ordered to be taken mon hereby Entered ofrecor. Whenfort the said plaintiffs 12 ought to have and recover of the said defendant Trederick This impleaded with fremen stow for use and benefit of Julius Arsenthal administration de bomi now with the will amexed of the latate of George . Hegen decensed damages enstamed plain by re year of the fremises and therenfrom reference is had to the Comb to asses domages herein hereafter. And afterwards, to mit on the 8th day of Tebrandy in the gent of and Lord on thousand eight him dred and litty one there in files in the office of the Chell of said Court, a cer tain, publication rotico In the mores ofigures following toinh:

7. Inthication Notice State of Allinni) & Imperior Court of Chicago Ownty of Cook & Imperior Count of Chicago The People of the State of Allinni fraid of Inline Aventhal, aministrator de bomi non. with the Will amounted of the Certato of George I Tegen decenser as Frederick Wish and (tomens stors, knowing ours of and ren Getyler. Successful. Attachment given to the said 23. lonens Foso, that a mit of attachment issued ont of the office of the Clerk of the In herrion Comb of Chicago date the goday of November. a. D. 1860 at the sinh of the board Reple of the State of Illinois, for live, TC. and against the estate of the daid flymen? Stord, for the sum of Clever Homedred, minety hightand befor Adams, directed to the Shriff of Cook County, which said mit has been returned executed. Now thereford, unless you, the sand fle men, Stose lehall personally be and appear before the said Superior Wort of Chicago on or before the fish day of the time thereof to be holden at the fant House, in the City Afkinger, on the first monday of December A. D. 1860. give special Blaid anoplear to

- The fait plant offs action , jung mint will be entered ag dinkt you, lind in favor of the Jaid plantiffs and Is much of the property attached as may be enflicient to entir by the Sind judgment and both, mill be plat ontis 24, of the same. H. Simball (task George Seville I Reff Atty. This Outifies that the Uppended Jullication Motion has been published in the Thicago Daily Olmverat" a newfrafer printed and fullished in the City of Micago Downly of Cook, and State of Allining, for the full space of Shirty days Consecutively, Commencing with the 29th day of Notember 1860. and enong with the 2gt day of December 1860, and that had received Tif Dollars for publishing the same. C. L. Rich Publisher for raprieton. Chun aftern auts to mit, on the 8th day of Febru Any in the gent of one Low And thout and light

the Sollowing among other proceedings were had and lintered offreend mi said Court to mit: The Verple of the State of Minin de bonis now, with the will annexed The Estate of George S. Noym decensed of Mount Alfrechment and and ag an Comer the said Rainteff by George Scovillo attorney and dew presound Leview of process of summons ifened in land Cand having hew had on the eard defendant Clemen Stow and he being three times toler by Gallen in when Count Comes not, nor does any person for him, but herein he wakes default which is on motion ordered tobe laken, and his default is hereby entered of record, herein against him. the month repend lash aforer aid. The said

after dant Comer Stown by his attorney filed in the office of the Clark of and Count his certain plea in the work of spines fort-lowing, to with. Ith Superior Court of Chicago 24. Clemen Store implead in mile Frederick Theis The People of the Fato of Illinois whosen to the use of Julius Olosenthal amin boton debour now with Will anne ed of George Frederick Kegin deceased Unt the said defend ant Clement Now by arthur M. Hindelthi allorny, Come and defends the mong and infing when to and Says that he does not own the said Rim above Umander of how, or any frank thereof in In amer and form as the sain plaintiff hath thereof Complained against him, and of this he fute himself whom the Country to. Contino M. Mindely allowing for Stres dift

Sak of Illinis for the Inperior Const of Chicago Olemun That impleaser inth Inouick Theis The Prople of the State of Selinois who sut to the ned of Julin Rosenthal administrator with the Will an nested of George Frederick Lagon Charles Stow being frish duly form Parp that he is the agent of Clemen Stores Stree perides in the State of California, and for the last five years has continually pesided in land State of alifornia, and not in this State, that this afficient is acquainted with the frets and fireunstances of the above Intitled Case - one the verily believes that Jain defendant his a good defence thinks whom Chrotton Inter enter and sworns to before me this Eighth day y Seb a. 01861. Conno L. Sichoff Sinc) delay Onthe

And afterwards. To mit out the IT day of Julangul afores mis mitto yend afores mis, paid day lifty the of the days lof the Dibrany Jim of Hair Court the following, among other fromings new had and entered offreend in sain Const to mi: -) *Ç* The Seple of the State of Ellinois use of Julin Rosenthal administrator Le bonis over with the will amused of The Cetato of George J. Appn Sciences of Meis 30 Clemens Stood Und now again some the our plantiffs who and for the new of Julin Rosenthal armin is tration de bomi mon with the will annuled of the Estate of Genzo di Hegy decensed by George Servillo their Attorney and the sain define out blumen store by a. W. Wind et his attorney ales comes and whom agreement of the hatis much much hero in open Court it is ordered that the default taken and intered. freend herein grymish the sais defend onthe flamend the bel and is hereby get neide and the Gambe is therenpon submitted to the Comb for trial on the issue joined herin on files of the sind defendant

Clemens Strew implensed with the said define and Frederick Heis defaulter Turin, without intervention of a ferry, and the land must here after himself brildence and anyements of Counsel and heing fully a vised in the from is finds if we for the olive plaintiffs on the effect joined on plen of the said defendant he afores and against both of the sain defor a auto to the found of one throw and two humdrew and ferent dollars. But therenford the din defendant belinens Stow by his attorney a. It Thindeth enbruits his motion for a new trino in said Cause, which motion for a new trind is overuled by the land, to which unling of the Could the said defend and there upon excepts. and letter his exceptions. Wherefore the said plaintiffs for the use afores and ought to have judgment entered on the find my of the Combas afores aid. Therefore it is considered that pain plaint it dehave and recover of and from the sand defendants for the use and benefit of Julias Resenthat a ministrator de banis when with the Will annufed of the whate ofly long F. Align and Lever dollars, in form afores and by the Comt how found the Madelle together with their Costs

and Charges in this behalf by persones, and thereof have weathin, and that an order ifind for sale of and thrushow the said defend and blemens How having intered his weefstrond from an aphead herein to the Supreme Court of the State of 31 Illinois which is allowed to him upon Constition that he file this appeal Bond in the penalty of fourten Smidred dollars with sunnity to the approved by a finge of this land to be files with his bill of exceptions during the Con tinuance of this term of the Cont. Und afterward, to mit, on the Det day of Fibruary in the year lack afore air there Ima files hi the Office of the Clark of said Cont. a futain Bill of Exceptions in the Fords ofigures follow my. A mit. In the Superior Count of hings Tibe Firm a. D The Resple of the State of Minis 3 1861 Rosenthub, Moministrator de Bill of E Exceptions Oleman Otred impleased with Austrich Heis

De it remembered that on the Cleventhe day of Sibrung A. A. 1861. The above intitles Come Same on to be Stried, and was tried by the bount without a funy, a fung tring being wines lights parties - 1 and to enstring the issue out the puch of the laintiff in dairo Cander to Attornay for the Rambiff Gerry Scorillo Cay offered in widened a feetain Bond, proporting to be signed by Fred-3/ Bond is in word offigures following to mit: "Know all men by the presents that me Fresenise Wiris, Clemens Stree and Anoral Getyler of the County of Crok and State of Illinois, and held and frinky bound into the Pingle of the State of Mindois, in the plund and of efficien humbred dollars, Corrent money of the United States which fragment well and truly to be onne mo hufomed, no mo ench ofus bind ourselves, our hims, executors and administrators jointly, severall, and firmly by this purents. Witness on hands and levels this trouty minh day of Withour a. D. 1846. 1 The fortition of the above ofligation is luch. Shut if the above bound Frebenick Heigh Gentor of the fact Will and testament offerego Frederick Hugger Accounted, do make of Calde to be made a true and perfect inventory of all

and fingular the goods and Chattels, mights : And Photos land threments and fun sit amento and the rents and profits issning ont of the same. of the Said decented. which have or shall com to the hand of the server hoursion or them ledge of the suin Frederick Warb, or into the 32, bosenesim of any other person for him, and the Same so much do whibit in the Brobato Court of the said County of Circ as regions by low! and also make and render a fair and just account of his actings and daning, as know execution to sino Court, when thereunto lawfully reguned, and to well and truly fulfil the duties ly ound whom him in and but the said Will: and Shall moreover pay, and deliver to the parous Intitled that, all the legrain and lequets em tained in paid will, so far as the Estato of the dain testator will thereinto Extend accord ing to the Value thereof, and as the land shall change lim. and shall in gound doubt other acts which muy from tihus to timo be remeired offine buy land. the this Aligation to be void, otherwise to remain in full forer and virtueattack Trederick Hal (sent) M. D. Caden P.J. Renco (Comen Stores (Sent) a. Getzlen (Such)

to the abmission of which said Bond as enidenced in this card the vain defend and Stow hill Arthur M. Winder his attorney objected, but the Court overriled the objection, and admitted the said Bond in bridened, and the Saw defend and then and there of explicit to the Minion of the Court in overaling his objection and in allowing the hond to be I given in evo'-dence - Mus further to sught ain the ifens on behalf of the Raintiffs their vain Attorny 39, offered in widerio a futario praper pourporting to be a certified coping of a certain orin and to have been musto by the look founty Court, which paper is ind mores and figures us follows tomit: Country Court of Cook Country June Som Ment How Hegy I. Ancker. frago proceedings were buy and before out Court had Allow and of Claim of Executions account This lay comes into Combined Cotato of

Hup. assentor of the lash will and Testament of George S. Hogon, decensed, by this attorney O. M.M. Mull. and oler Comes Of word Scovillo appointed to defend the Cetato of onis decenced against the claim of onin Heis and it is 14 Ordered that said Chain le allower. Elass Member from

Trederick Heip afo for his Recorner as luch Heinton. Thorning receipts amounting to \$1841. 60. Which charang been Hamined and approved is orting to be recorded. and it is further ordered that the matter of citation in this Cestato he di miper at the Cost of said Executor, and it appearing to the Court that sain Executor has pair all claims legally established against sain Estato, it is ordered that he pay over to the devicus inter the mill Estato shows to be in his hunder Jango of Dain decenter or their heir the balance ofsais State of Mains of Cook County of A Charles 12. Sand Colert of Two County Court is ind for said Creaty the

from the licords of the daw Comb In littimour whereof She wanto set my hand and affit the seed of vain bout at Chileago this 18th day of July a. D. 1860. to the giving of which in evidence the said defend and Mosel - buy his sin altorney objected, but the Count orevaled the objection and admitted the 35. Same in widence, and the said defendant luf hi said attorney thew and there objected to the Said opinion of the Court in overaling dais Objection, and no allowing the same to be grow ho bridence. And further to enterin the effect on likaly of the Rainbiffo their said attorney offered in lordence a certain praper purporting to lo a certified copy of a certain order and forecuting supports to have taken place in and to helive been made by the Cook County Count Which paper is ni words and figures as follows. Water of Cork f. Hear before the Hogerable Milliano J. Barrow Jange of the bounty bout

Said longt began and held at Chingo in the said Country low the Unio Monday lof march, being the 19th day of Pain Mouth in the year of our Lord But thow and Eight Hunther and Sixty and of the Suchandence of the Unites States long the much Fish of said Court I Treent Honorable William J. Baron Jugo John Gray Sheiff. Charles J. Farrell Class De et remembered that out the nine funthe day of Much with year of and Lord Cighteelo hundred and littly the following proceedings mul dely and before said Could har and entired of Meleord. to min: It appearing this day to the Court that Treowick Wife, Executor of the Last will and Swhamuch oflyings of Hegm deceased, him faile and neglected to respond to the Citation Istimo hackoford isened. I'm thend think on allach much for the said Frederick Wief if we accordingly! One nont afterwards Come the suit Frederick Theis afrow the afore air attachment

in Sustray of Daniel S. Wood Reputy of John Upray Sheriff of Cook Country, ind it is adjunged that daiso Heip pury the lock of this proceed und, and it is ordered that a frontho hayment of said Costs tho said Frederick They be discharged from Jaw Attachment. and it appearing to the Count that Pair Execution has missmanaged and neglected the Catato of enil decenter, and has missaffer hriates the assetts of the samo, it is ordered that he be removed from his office as buch Geentor. Mid now comes Julin Avsenthal and maker application for arministration de bymis now with the will anneted of sind baluto and it appearing to the Court that sais Cotato has not been fully administered, and that Said Notathab is a Rushable person, to whom Togrant luch administration, it is ordered that athinis tration de bours now millo the mill annexed of the testato oflying F. Koym deceased be granted to falin Rosenthab whow his entering into Both in the penal send of Frenky Um hundred Wolland propoble land Conditioned as the hand directs. Chill the dais Julius Resenthal Fravery horaced the Bond with George Deville dur Molph Lock, as his securly which is approved 1, the Court, it is ordered that belle of ar-

ministration de bomi now with the mile an nesed ifend to him accordingly (Signes) William & Barrow Jango State of Allinois of Country of Cook of Schanles 18. Farmelo Clark of the book, County bout in and for Said County do huly lithing that the foregoing in the and Correct trans cript from the Records of my Office. In testing wherefol hereunts set my hour and affit the Sent of said Count A. D. 1866. O. J. Farwell black (Sinl) To the giving of which in loidence the defendant by hill sain attorney objected - but the Court I conselect the objection and availled the same in low dence that the said defendant by his faid Attorney their and there sceptero to the Said opinion of the Court in sacruling in Objection, and in allowing the same tothe Given in evidence. Miras atmilled by the defendants Allowing this admint has been mine

by Krenthab on Weif for the payment of the money dained in this suit defont the Commulcoment of the purit action. Amus also for the admitted that the following letters of arministration has been granter by the Cook County Court to said Routho before the Commencement of this luit Sinhe of Chilings Sch 39, The People of the State of Ollinois to all whom the Purents shall come, Mating: My ye that where George of Meyor of the County of Cook and liftale of Allinois dien inhestate, or it is said, on or about the brenty second day of lugach a. D. 1846. having at the time of this decense personal property in this State, which muy be lost, or destroyed or diministred in Value of Spury care the not taken of the same, and while Merenick Meip Executor of the lash Will and Festament of said decensed has heen Umoved from his office, leaving suit Ostato not fully arministered, I though therefor that sind publicly may bet bolleched and free served for these with shall affect to have Wegal right winterest their, need houly

appoint Julius Aventhal of the County of Cook and Stake of Allinois administrator de bom's now with the will annexed of all and singular the good and Chattels, rights and bredite, which were of the sain Germo I. Hope at the time of his decenter with full pouge and authority to feel and pollect the said property and debts where over the dame muy be found in this State, and in general to do and perform all other acts Which now are or herenfter muy be regioned of him by law.

Milness Charles 18. Farwall Coll of the County Count of said County, and the Sent thereof, at the bity of Cherge, in dais County, this ninetanth day of Much A. D. 1860. Seul) O. B. Farwell Olest of the Overhy Count. And this true all the evidence on the part of the Raintiffs. The Evidence tras offered or given by defendant.
The Court from for the Raintiff the semi of
\$120% against the said defendants Heighten the.

Ciffendant Store by his fair alterny moved forw mut tring. The Court overules the motion for a Dut hind.

and rendered judgment for the plant off. to which ruling and opinion of the Comt in overaling said motion foral ment trind and in not granting a new tring sind the by his said allowing the and there afception, anoprage that this his Poil of Exceptions, might be allower, signed and sealed by the Vout which is accordingly done. Grant Tororich Fends Al. Ollow is correct Schnik Ger Scrille Poffsatty Und afterwards. In mit, on the 23" day of the month tyen lack afree air. There man Ofiles in the office of the Bleck fair Count a cutain Pones of Atternay and appentioned Copy of Born of accorning

Thand all men by these presents thinked Olymen Store of the City and Country of San Francis co. State of Cal ifornin, by this presents domaker Constitute and appoint Charles Storo of the City of Chicago in the County of Carl Anto of Allinois. my true and lanful altorny for mo and in my name. and to my new house, demand, due for and Receive all and every lum ofmoney, Acht or demand that may be du me, or may be come due one. by and from any person on purous whatevere 42 In the State of allinois, and out receift thenof tomako, Sent and deliver acquitioners or other Sufficient di Charges forthe same: Chie finthes more to sell and convey to euch person or person and for kuch lum or dubine of money or to my Saw Attorney Shall see proper, all also Lungulow those frices francels and lote ofland Tofwhich dang be presessed or in which a 1 have any claim or Interest, lying in the State of Allinois, or any other State in the Union and upon such ball or sules, Convenient and proper Du or, with such coverent or coreencute of Warrenty, as to enjound attorney may keen proper, in due form of Land, as one dut or dess, to make Seal; deliver and acknowledge, and further more to order ento all land ofwhich I must be proceed no find State of Illiness or any other State no the Uman and

12: into every fact or proce thereof, and penealle presention and key end thereoft toko mi my grand and the least cain premises or any front Whereof, and for and and me my orand to digno, deal or deliver leases or other his trumente of miling, and for one and in my mains to accept and frecion award bring such of money which show he coming to this out account of fuch felling in letting, and furthermore to transach all my lineines in the State of Illinois generally, whether the same be herein specially mentioned or not and for me and in my many and then buch as I might to if puroually purent giving and growt ing to any sain actioning full planes and anthontity todo and performed all and dingular to not mocksung tolle four and performed, hereby antifying aline con firming wrighting which one our Alterny shall lawfully do or lande tille done by without these presents. Withes my hand and lend this Eleventhe dayof Olemen Stow (S) State of California City Mounts of an francis end Boil planentered hat In the Cherenthe day of July in the year from

in the lity & County afore and before med I. Jones a Combucherner releiding in rais City, duly a prim ed a Commissioner of the Governor of the that of Allinois to the hot act nowledgment and proof of the election of Dus and The matruments fariting unter sent, to be user and runder in said State presonally appeared blemen Stone who is personally known to met to bet the personation 2 27 mand is subscribed to the foregoing letter of attorn as having yenter to some, and a knowledge that he had blented the same for the user and Kuposu Therein of presed. my hand and officed my official Sent as Commissione lef the sain State of Ulinous al my office in the City of my formiero and tuto afores aist . This the Eleventh day S. S. Jones Commissioner of the States of Minors for the Orty Hermy of Sunframisco.

Know all Men by these presents. huh no Clemens Stow, Charles Stown, Charles Lett and Cother It Winder of Chicago in the Country of Cook and State of Illinia and held and fimily bound into the Ocople of the State of Silinois whole to the use of Julius Rosenthal, administration do boni now, with the will annexed of the cetato of George Fridaich Veryn decenses, in the punt 45of the United States, for the pay much of which well and bruly to be made, or bind ouselves out hers, Helentons and administrators leverally and frimly by these presents. Witnes on hours and sents this fourteenth lay of February in the year of and Lord Out how and Eight the mared and lifty one. The Condition of this obligation is such that whereas the said People of the State of Minnis to the use of Julies Hosenthal armins trator as afores in. Mid on the Cleventh day of Sebrulary a. D. 1861. In to Superior fourt of Chicago. in the County and State aforeion and Tof the Tebruary Form thereof El. O. 1861 Weaver a gird yment against the above bounden Course Stow impleded with one Frederick His for the sens of Fredre hundred and leven cents hearde Costs of Such

from which said find, much of the Superior long The said blement thow has mayor for our oftening On appeal to the Suprem Count of sais State. Now thenfore if the said blemens Stow shall Any prosecuto his said appeal with effect and morrow pay the amount of the judg ment; losts Interesto and damages penderes ag much him 46 in case the said fin yment she all be affirmed In said Supremo Comb, then the above obligation to be vois. otherwise to remain in full Taken this enteres into before on Clemens Stone at my office in Chicago his by Charles Stose his ( serve 28 day of February M. D. 161. Ostorney in fact Grant Goldwich . arthur H. Winders sine Judit of the Superior : Controf Chicago

one County rent 47 the hapen in file. half I was ment interes alther with the bill of a ceptions where the deople cut ain Claude Frederick Hen defendants. nes and hand and lend Jain Court at the City of Incago in said Cremty, Fit Stay of much M. D. 1861. Matter Rimbeall

In the Infreme lunty the that 48, 1 Ilimin Cleans Stose Mul Guna Dinim inflicted with Fred. Mis | Uprit Am MA. 1861. 4 aprillant The Kenfell of the State of Illianiz, warza w The de of Holius Konsullent aprile. Wand how Comes the Stail Spellant Clemens Time, by his attorne thether 1. Mindet lased says the The Record of productions designationed of the trust below in the most conce. There is great and manufest Ener in this worth that the local gine me present avisul min the water been and a fine your Koriste Ala, and That Milaut nexuled the metin for even hind; and not appellers aren that there and worth Rumbins Whenestand hounday dines mound mariful Error Therin apparent. formit mit ment thementhe renered and setorical ac

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In the Supreme lunt of the 48. Hate of Stimming -Mich grand Dinsion. Cepril Fermas. 1861. Clemen Store, who is implented with Frederich This, to appellant The Peaple of the Huley Himis, ulso such The are of Inlies November Administrator de bruis un with will armed offer. Triderich Hegin deciant. appelles. And use Cines The soid appellant levier the by Arthur W. Midet Thein all oney and soys that in the Record of Investing and de soid down enacted carrie, Thene is great and neorized town the This trute: The gener in Erriting Mr Crisis Copies of the notes with preciding

of the look loving Count of States in the 18ill of Exception de propost 32.33.34.35:36.37. g The Care and also fings gthe ab-- 2brock -The livest ever in admitting in Evidence The Supposed Hour enthants proof of to xuention & getyler, or of his death. 3 The lunt end in finding for the Plaintists below, and agrirul, dependont, below. The thirt end in overraling 5 The Court erred in jundering Judjement for the Krinters below, and against the defendant below in mornion and Jum as thesen & the Reend and rich appellant bustien aren, that in sind Record of Juferners and broudings -

in voix above entitled course. There one other dines quest and municial Enos a ten. Whenfore he prougo that ford Juspenent mozar resource 50. and ser unite Attrus M. Mindett letty for legislite. Manh 21. 1861. h Aullo Can Creatury Cho Soulle frafra

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