

but does not set out, the proceedings on which the decree of the Indiana court is based, and I cannot, therefore, determine certainly what the scope of that decree is, and whether the receiver who holds thereunder can fully administer the whole trust which is here disclosed. Still further, the method of his proceedings may be controlled by the state laws of Indiana, of which the court takes notice, but perhaps takes notice only as a matter of evidence, and which, therefore, cannot be taken into account in a hearing on a general demurrer.

There are still other questions of the relative rights of various members of this society which were suggested by the respondents at the hearing, and which, so far as I can see, can be rightly solved only after full knowledge of all the facts regarding the history of these payments, and the disposition which has been heretofore made of such parts of the funds as are no longer in the hands of the society. These facts can be made to appear only by the evidence in the cause. The safe rule on a general demurrer to a bill in equity is that the demurrer must be overruled unless it appears that on no possible state of the evidence could a decree be made. It seems to me that no such conclusion can be reached in this case; in short, it seems to me that the questions suggested by the bill, as well as the questions suggested by the respondents themselves in their argument, can be solved only after a full hearing of the cause on bill, answer, and proofs.

The demurrer must therefore be overruled.

BEAL v. NATIONAL EXCH. BANK OF DALLAS.

(Circuit Court of Appeals, First Circuit. May 23, 1893.)

No. 32.

BANKS AND BANKING—COLLECTIONS—INSOLVENCY.

Where a bank sends commercial paper to another bank for collection and credit on general account, the custom between them being to enter the credit only when the paper is collected, the relation between the banks is that of principal and agent until the collection is made and the money received by the second bank; and if the latter sends it to another bank, which collects the paper, but does not remit the proceeds until after the agent bank has failed, the principal can recover the proceeds from the receiver thereof. 50 Fed. Rep. 355, affirmed. *Bank v. Armstrong*, 13 Sup. Ct. Rep. 533, followed.

Appeal from the Circuit Court of the United States for the District of Massachusetts.

In Equity. Bill by the National Exchange Bank of Dallas against Thomas P. Beal, receiver of the Maverick National Bank of Boston, to recover the amount of a certain draft collected through the latter bank. A demurrer to the bill was overruled. 50 Fed. Rep. 355. By a stipulation filed, the allegations of the bill were taken, at the hearing, as an agreed statement of the facts, and the court entered a decree for complainant. Defendant appeals. Affirmed.

The facts as alleged in the bill were, in substance, as follows: The plaintiff bank sent to the Maverick Bank a draft for collection and credit on general account. The draft was payable in Taunton, and the Maverick Bank sent it to the Taunton National Bank at Taunton for collection and credit; and on October 31, 1891, the Taunton Bank collected the draft, and credited its amount to the Maverick Bank, and mailed a letter to the Maverick Bank stating that it had done so. October 31st was the last day that the Maverick Bank did business, it being taken charge of the next day by a national bank examiner, and closed by the direction of the comptroller of the currency. The letter written by the Taunton Bank did not, therefore, arrive until after the failure, and consequently no entry of credit on account of this draft was made by the Maverick Bank to the plaintiff. The Taunton Bank had no mutual account with the Maverick Bank, and was in the habit of remitting the proceeds of paper sent it by the Maverick Bank for collection every five days, and sent a check for the amount of the draft collected by it to the receiver. The usage between the plaintiff and the Maverick Bank was that the Maverick Bank credited the amounts of drafts sent it by the plaintiff for collection on the day the same were collected on general account, and did not keep the proceeds of such drafts separate, but mingled them with its funds; and this was done with the knowledge of the plaintiff.

Edward W. Hutchins and Henry Wheeler, for appellant.
John C. Gray, for appellee.

Before COLT, Circuit Judge, and NELSON and WEBB, District Judges.

PER CURIAM. We are of opinion that this case is governed by the decision of the supreme court in *Bank v. Armstrong*, rendered March 6, 1893, (13 Sup. Ct. Rep. 533,) and it follows that the decree of the circuit court must be affirmed.

KNOEDLER et al. v. GLAENZER et al.

(Circuit Court of Appeals, Second Circuit. May 5, 1893.)

1. RIGHT TO FIRM NAME—INJUNCTION—EVIDENCE.

The firm of Goupil & Co., Paris and New York, sold to complainant M. K. the New York stock, good will, etc., together with the right to designate his business as "Formerly Goupil & Co. M. K., Successor;" agreeing to supply M. K. with a stock of prints and paintings for six years as agent, but refusing to allow him to use the name Goupil or Goupil & Co., without words to indicate succession, allowing him, however, to state that he was sole agent for Goupil & Co. in America. In 1887 the Paris firm, which, by legal succession had become "Goupil & Co., of Paris. B., V. & Co., Successors," established a branch of their business in New York under that name. *Held*, that they were entitled so to do in the absence of any express contract to the contrary. 47 Fed. Rep. 465, affirmed.

2. SAME—GOOD WILL.

There being no evidence of any attempt on the part of defendants B., V. & Co. to injure or impair the good feeling of the customers of complainant M. K., or deprive him of the advantages of the good will of the American business purchased by him, he was not entitled to an injunction against defendants.

3. SAME—CONSTRUCTION OF CONTRACT.

The sale of the good will of Goupil & Co. in New York to M. K. did not include the good will or rights of Goupil & Co., of Paris, including the rights of succession, and the right of the successor to do business wherever they saw fit, provided that they did not represent their business as