

of the value of \$127.30 and \$113.96 in money were found on Atwood's person, besides other articles of small value, all of which were turned over by the city detectives to J. E. Jacobs, a post-office inspector. The postmaster at Whitesboro identified certain envelopes found on Atwood's person, as the envelopes in which he had received the stamps from the post-office department, and Atwood acknowledged to him that he was the person who robbed the post office. The money found on Atwood's person could not be identified as the money stolen. On August 10, 1893, Jacobs paid to an attorney for Atwood, pursuant to an order of the United States circuit court commissioner before whom an examination was had, the sum of \$63.36 of the moneys taken from Atwood, retaining in his hands the balance of \$50.60, the amount of moneys stolen from the post office. Atwood was indicted at the January term, 1894, of the United States district court. The indictment contained two counts; the first alleged the stealing of the postage stamps, and the second the stealing of the money-order and postal funds. Atwood pleaded guilty to the first count of the indictment, and was sentenced on the 17th of January, 1894, to imprisonment in the Albany County Penitentiary, for the period of two years and six months. The plaintiff was retained by Atwood, as his counsel, before he pleaded to the indictment, and on the 19th of January, 1894, gave to the plaintiff an order directing the post-office inspector to pay the \$50.60 to the plaintiff. The plaintiff presented this paper to said Jacobs, and made a demand upon him for said sum of \$50.60, taken from Atwood and then in Jacobs's possession as such post-office inspector. Jacobs refused to pay the money to the plaintiff, and on the 30th day of January, 1894, he forwarded it to the postmaster general, together with the postage stamps and other articles taken from Atwood. The plaintiff brings this action to recover said sum of \$50.60.

Frank C. Ferguson, pro se.

William F. Mackey, U. S. Asst. Dist. Atty.

COXE, District Judge. It was admitted at the trial, and the admission is reiterated in the defendant's brief, that the money found on Atwood was not identified as having been taken from the post office at Whitesboro. The court is, therefore, unable to discover by what right or title the defendant assumes to retain this money. There is not a particle of proof that it is the money that was stolen, or that the defendant holds it pursuant to any legal process. The defendant has it and proposes to keep it if it can. So much is clear, but the reasoning by which it is sought to justify this proceeding is not clear. The argument seems to be that, because the defendant has lost money through Atwood's burglary, it can reimburse itself, without process of law, from any property found in Atwood's possession. This will not do. The proposition pushed to its logical conclusion would enable the defendant to seize Atwood's watch or even his clothes, sell them, and apply the proceeds to the extinguishment of the debt. At the time of the assignment to the plaintiff the defendant had not even the possession of the money; it was in the hands of the inspector. The assignment transferred the money to the plaintiff and gave him a good title, certainly as against the defendant, who has no title at all. The plaintiff is entitled to judgment as demanded in the petition.

## WECHSELBERG v. FLOUR CITY NAT. BANK.

(Circuit Court of Appeals, Seventh Circuit. October 27, 1894.)

No. 105.

**1. CORPORATION—ATTEMPT TO FORM—LIABILITY OF CORPORATORS AT COMMON LAW—WISCONSIN STATUTE.**

Rev. St. Wis. tit. 19, c. 86, §§ 1771-1775, provide that three or more persons may form a corporation by signing and acknowledging written articles declaring the purpose, amount of capital stock, and other particulars regarding the corporation, which articles must be filed for record in certain public offices, and "no corporation shall, until such articles be so left for record, have legal existence"; that in stock corporations stockholders only shall be members; that, until directors are elected, the signers of the articles shall have direction of the affairs of the corporation, and make rules for perfecting organization and regulating subscriptions to stock; that "no such corporation shall transact business with any other than its members" until one-half of its capital has been subscribed, and 20 per cent. paid in, and upon any obligation contracted in violation of such provision the corporation shall have no right of action, but the stockholders then existing shall be personally liable; and finally, that "every such corporation, when so organized," shall be a body corporate, and have the powers of a corporation. Where W., with two others, had signed and acknowledged articles, pursuant to this statute, which were duly filed and recorded, but no further proceedings were taken, and no stock subscribed for or issued, and no capital paid in, but the other parties, with W.'s knowledge, but without his participation, proceeded to transact business as a corporation and incur obligations as such, *held*, in an action against the signers of the articles, including W., upon a note executed in the corporate name, that it was the purpose of the statute that a qualified corporate existence only should date from the filing of the articles, but that the full privileges of incorporation, including exemption of the members from liability, should be withheld until capital stock was provided, and that, until compliance with the statutory requirements as to providing such stock, the signers of the articles, including W., were liable at common law for the debts incurred in the name of the corporation. Woods, Circuit Judge, dissenting.

**2. SAME—NATURE OF LIABILITY.**

*Held*, further, that such liability was a primary, contract liability of the signers of the articles, and was not dependent upon the knowledge or understanding of those dealing with the purported corporation, nor upon the personal participation of such signers in the transaction of business, nor upon their deriving any profit from it. Woods, Circuit Judge, dissenting.

In Error to the Circuit Court of the United States for the Eastern District of Wisconsin.

Action by the Flour City National Bank against Julius Wechselberg, Ernest S. Moe, and Charles H. Williams. Plaintiff obtained judgment. Defendant Wechselberg brings error.

This is an action at law by the Flour City National Bank against Julius Wechselberg (plaintiff in error), Ernest S. Moe, and Charles H. Williams, as defendants below, for recovery of the amount due upon a promissory note for \$3,000, dated September 18, 1889, made by the Northwestern Collection Company to the Northwestern Collection, Loan & Trust Association, and indorsed to said bank. The alleged liability of the defendants below is based upon their acts in the incorporation of the Northwestern Collection Company as a corporation under the laws of Wisconsin, and the transaction at large of business thereunder, without having capital paid in as required by statute, whereby it is asserted that they became personally obligated to