

the indorser's account with the bank, does not transfer to the bank the legal title to such draft, and a correspondent of the bank, who collects the draft for it, is responsible therefor to the indorser. *Tyson v. West. Nat. Bank of Balto.*, Court of Appeals of Maryland, March 16, 1893, 26 Ati. Rep., 520.

7. BANKERS—DEPOSITORS — DEATH OF PARTNER—LIABILITY OF DECEASED PARTNER'S ESTATE—FRESH RECEIPT NOTE—NOVATION.

One G. Head was, at his death in December, 1890, a partner in a bank, the firm consisting of himself and his son G. S. Head, a customer of the bank had, in the lifetime of G. Head deposited £1,400 with the bank, on a deposit note carrying interest at 3½ per cent. On the death of G. Head the bank was carried on by the son G. S. Head alone; the customer subsequently withdrew £550 and received a fresh deposit note for the balance £850 the old deposit note being given up and cancelled. The customer was aware of the death of G. Head, and continued to receive interest on the balance of the amount on deposit till the bank suspended payment. The customer now claimed to be entitled to prove against the estate of G. Head for the £850 remaining due from the bank.

Chilty, J., held, that the acceptance by the customers from the surviving partner, of a fresh deposit note for the balance of the debt, was not sufficient evidence of novation to discharge the estate of the deceased partner, and that the customer was therefore entitled to prove against the estate of G. Head for £850 the balance of the deposit due from the bank. *In re Head, Head v. Head*, Ch. D. [1893], W. N. 138.

BANKRUPTCY.

PROOF OF DEBT — LOAN TO TRADER INTEREST VARYING WITH PROFITS — BOVILL'S ACT (28 & 29 V., c. 86), s. 5 — PARTNERSHIP ACT, 1890 (53 & 54 V., c. 39), s. 3.

Appeal by the trustee in the bankruptcy of H. Hildesheim against the reversal by a Divisional Court

(Vaughan Williams and Bruce, JJ.) of the decision of the judge of the Manchester County Court, affirming the rejection by the trustee of a proof for 20,329*l.*, which had been tendered in the bankruptcy of D. Hildesheim, a brother of the bankrupt. The bankrupt was a trader. On the 1st of July, 1881, the brother advanced to the bankrupt a sum of 20,000*l.*, upon the terms of an agreement in writing, dated the 28th of December, 1880, which provided (*inter alia*) that the borrower should pay to the lender interest on the 20,000*l.*, at the fixed rate of 5 per cent. per annum, and also, by way of additional interest, such an amount as might be equal to one-fourth of the net profits from time to time made by the borrower in his business. Towards the end of the year 1885, negotiations took place between the brothers as to an alteration of the terms of the agreement. The borrower offered to pay off the loan, and said that he would be able to do so, because a sum of 19,850*l.* was coming to him from an insurance company on the 31st of December, 1885. The lender replied that he did not want to have the loan repaid. Ultimately a new agreement in writing, dated the 25th of January, 1886, was entered into, by which the lender agreed, as from the 1st of January, 1886, "to continue his existing loan" to the borrower of 20,000*l.*, upon the terms therein contained, and the borrower agreed to pay to the lender interest on the 20,000*l.* at the rate of 10 per cent. per annum.

In January, 1893, a receiving order was made against the borrower, and he was afterwards adjudicated a bankrupt. The County Court judge held, that there had not been a new advance in 1886, but that the old loan continued, and therefore, by virtue of Bovill's Act and the Partnership Act, 1890, the lender could not prove till all the other creditors of the bankrupt had been paid in full. The Divisional Court held that in substance the original loan was repaid in 1886, and a new advance was made upon terms which did not come within the Acts. The Court accordingly admitted the proof.

The Court (Lord Esher, M. R., and