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RAHILLY v. WILSON.

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amount contributed by them, the shares of the whole assets should be considered equal.

Upon dissolution after the debts are paid, the advances should be first paid, and then each partner should be paid ratably what is due to him in respect of capital upon the settlement of the accounts of all the partners. If there be a residue, it should be divided as profit in equal shares, unless otherwise agreed upon. The losses of capital, if not specially provided for, must be borne equally. *Watson on Part.*, 285; *Lindley on Part.*, pp. 623 and 827; *West v. Skip*, 1 Ves. Sr. 242.

The master has been governed in his distribution substantially by these principles. The costs of the proceedings have arisen from a difference of opinion upon the articles in reference to a division of the assets. In this no blame can be ascribed to either party; and therefore the costs were properly charged in equal portions.

The exceptions are dismissed.

U. S. CIRCUIT COURT—MINNESOTA.

RAHILLY v. WILSON.

Warehouse Grain Receipts—Sale—Bailment.

1. Where grain is stored in an elevator warehouse with the understanding implied from the known and invariable course of business, that it may be sold by the warehouseman, and that when the depositor shall be ready to surrender the receipt of the warehouseman therefor, the latter will give the highest market price, or the same amount of grain of the like quality, but not the identical grain deposited nor grain from any specific mass, the transaction is a sale and not a bailment.
2. Sales and bailments stated.

[Minnesota, U. S., December, 1873.]

This was an appeal in bankruptcy from the decree of the district court, granting the relief prayed in the original bill of Rahilly, filed for himself and the other warehouse grain receipt holders, and dismissing the cross bill of the First National Bank of St. Paul.

The suit was brought in the district court to settle the title to twenty-one thousand five hundred bushels of wheat, or its representative in money, now lying in that court.

Geo. Atkinson & Co., and their successors, Atkinson & Kellogg, were engaged at Lake City as warehousemen and commission and forwarding merchants, during the fall of 1868, and up to December 8th, 1870, when they filed their petition in bankruptcy, and were adjudicated bankrupts.

The firm of George Atkinson & Co. was composed of George Atkinson alone until April 1st,

1870, when Kellogg became a partner. The old name was used until September, and was then changed to Atkinson & Kellogg, and so continued until their failure, at which time they had in their warehouse the wheat in controversy, which was taken possession of by the assignee in bankruptcy.

At the date of their bankruptcy, they had outstanding warehouse receipts issued to farmers to the amount of about thirty-five thousand bushels, representing Nos. 1 and 2 grades of wheat, and two receipts dated November 23, 1870, to the amount of twelve thousand bushels, issued as collateral security for the payment of three drafts given to pay an overdrawn bank account with their bankers, to the amount of ten thousand dollars. These two receipts were issued to the drawee named in the drafts, and they had been endorsed over to their bankers. They represented twelve thousand bushels of wheat, and are now held by the First National Bank of St. Paul, having come into its possession in the course of a transaction hereafter mentioned.

The complainant, a farmer to whom some of these receipts had been issued in behalf of himself, and the others holding receipts to the amount of thirty-five thousand bushels, filed this bill against the assignee, and seeks to appropriate the fund exclusively to the payment of their receipts. The bank, by stipulation, is made a party defendant, has answered the bill, and also filed a cross bill, alleging that it has, to the extent of its claim, a prior right to payment out of the fund in court.

Both suits were heard together in the district court upon proofs taken.

The complainant, Rahilly, and other owners, on whose behalf he sues, held receipts in the following form :

Not good unless
Countersigned by
Warehouseman.

LAKE CITY, Minn. . . . 1869
Warehouse of George Atkinson & Co.
Rec'd in store, of P. H. Rahilly..bush No...Wheat
(Signed) GEO. ATKINSON & Co.
. . . Per Atkinson.

The receipts issued by Atkinson & Kellogg were similar, with the addition of the words "subject to warehouse charges and advances," and an omission of the words "in store."

The proofs show that Atkinson & Kellogg were the owners of an elevator in Lake City, constructed in the usual manner, for the purpose of receiving, storing and discharging grain—the elevating machinery being propelled by steam. There are several similar buildings in the same city, and the proofs show that business