

No. 12564

Supreme Court of Illinois

Miller

vs.

Ball

71641  7

242

Lyonsville, Miller

vs

Joseph S. Miller

Miller

242

1858

12564

1
Be it remembered that heretofore to
wit on the Seventh day of January A.D.
1857 said day being a day in the vaca-
tion of the Lake county circuit court be-
tween the September term of said court
for the year 1856 and the February term
of said court for the year first aforesaid
an appeal bond was filed in the office of
the clerk of said court which said bond
is in the words and figures following
to wit;

"Know all men by these presents that we
"Lysander E. Miller Executor and Elizabeth
"Miller Executrix of the estate of Henry Mil-
"ler deceased as principal and Amos
"S. Waterman as security are held and fir-
"mly bound unto Joseph Ball in the pe-
"nial sum of one hundred dollars for the
"faithful payment of which we bind our-
"selves our heirs executors and administra-
"tors jointly & severally firmly by these
"presents In witness whereof we have
"hereunto set our hands and seals this
"6th day of January A.D. 1857"

"The condition of the above ob-
"ligation is such that whereas the above
"named Joseph Ball did at the Janu

2 " any term of the Lake county court sitting as
" a court of probate present a claim against
" the estate of the said Henry Miller deceased
" and at said January term for 1857
" the same was allowed by said county
" court at the sum of fifty dollars
" And the said Lyander E. Miller
" Executor and Elizabeth Miller executrix
" as aforesaid has taken an appeal to the
" Lake county circuit court from the order
" allowing said claim. Now therefore if
" the executor of said estate shall prosecute
" said appeal with effect and shall pay
" whatever judgment may be rendered by
" the court upon the dismissal or trial
" of said appeal then the above obliga-
" tion to be void otherwise to remain in
" full force and effect"

" Lyander E. Miller *Seal*
Executor &c

" Amos S. Waterman *Seal*

" Elizabeth Miller *Seal*

On which said bond are endorsed the words
and figures following to wit,

" Approved by me at my office
this 7th day of January 1857"

" A. S. Bates clerk "

" per J. H. Windsor Deputy "

And that on the said Seventh day of January a supersedeas was issued out of said circuit under the ^{by his then deputy} of the clerk, and the seal of said court, which supersedeas is in the words and figures following to wit:

"State of Illinois"
 "Lake County" } "ss"

"The People of the State of
 " Illinois to James C. Biddlecom clerk of
 " the county court of Lake county and John
 " L Turner Esquire judge of said court
 " Greeting, Whereas at the January term
 " of the Lake county court sitting as a
 " court of probate an order and decree of
 " said court was made allowing a claim pre-
 " sented to said court by, Joseph Ball
 " against the estate of Henry Miller deced-
 " ed for the sum of fifty dollars as from
 " the appeal bond of Sysander E. Miller
 " Executor of the estate of Henry Miller
 " deceased filed by the said Sysander E.
 " Miller (executor as aforesaid) in the office
 " of the clerk of the Lake county circuit court
 " appear to us, And whereas the said Sysan-
 " der E. Miller Executor as aforesaid has ta-
 " ken an appeal from said order of your
 " said court, and thereupon executed an
 " appeal bond with security according to law

41 " now on file in the office of the clerk of said circuit
" court, Therefore we command and enjoin you
" the said John S. Turner Esquire Judge
" of said county court and you James C.
" Biddlecom clerk of said county court, as
" aforesaid, that you absolutely and entire
" ly refrain and desist from proceeding any
" further in said matter of said claim so as
" aforesaid allowed, and all proceedings in
" relation thereto you do absolutely suspend
" until the further order of our said circuit
" court "

" Witness Augustus B. Cotes Clerk
" of said court and the seal thereof at
" Waukegan in said county this seventh
" day of January A.D. 1857 "

{Seal of
Court

" A.B. Cotes Clerk "
" per J. W. Windsor Deputy
" To the Sheriff of said county of Lake to execute "

And that afterwards to wit on the
9th day of January A.D. 1857 said supersedeas
was returned into the office of the clerk of said
circuit court with an endorsement made
thereon by the sheriff of said county which
endorsement is in the words and figures following
to wit,

" Executed the within writ by reading to and in
" the hearing and presence of John S. Turner and James
" C. Biddlecom this 9th day of January

5 "A.D. 1837"

"2 services 1.00"

"2 miles F .10"

"Return 10"

"\$1.20"

"Parnell Munson Sheriff"

213

"United States of America } ss"
"State of Illinois Lake County }

"Plea before the

"Honorable George Manierre Judge of the
"seventh judicial circuit of the State of Illinois

"At a term of a circuit court for the
"county of Lake in said circuit begun and
"held at Waukegan in said county, on the
"second day of February in the year of our
"Lord one thousand eight hundred and fifty
"seven and of the Independence of the
"United States the eighty first"

"Present the honorable George Manierre
"Judge Carlos Warren State Attorney
"Parnell Munson Sheriff of Lake County
"Attest A.B. Cotes Clerk"

And that afterwards to wit on the
fifth day of February A.D. 1837 the same being
a day of the February term of said circuit
court for the year last aforesaid proceed-
ings were had in said court which are

entered of record in the words and figures following to wit;

"Joseph Ball"

243

"136"

vs.

"Appeal"

"Lysander E. Miller Executor of
"the estate of Henry Miller deceased"

"Appellant"

"Now comes

"said Plaintiff by Williams his attorney, and
"enters his appearance, and waives service of
"process herein, and thereupon comes
"said defendant by Park, his attorney,
"and enters his motion for a continu-
"ance of this cause"

And that afterwards to wit
on the said fifth day of February, ^{further} pro-
ceedings were also had in said court
in said cause which are entered of rec-
ord in the words and figures following
to wit;

"Joseph Ball"

250 "136"

"vs."

"Appeal"

"Lysander E. Miller executor
"of the estate of Henry Miller deceased"

"Appellant"

"it now comes said

"parties by their respective attorneys and by their
"agreement it is ordered that this cause

7 " be and the same is hereby continued"

311

" United States of America
" State of Illinois Lake County } ss."

" Pleas before the
" Honorable George Manienn Judge of the
" seventh judicial Circuit of the State of
" Illinois," At a term of the Circuit Court
" for the county of Lake in said circuit,
" began and held at Waukegan in said
" County, on the first day of June in
" the year of our Lord One thousand
" eight hundred and fifty seven, and
" of the independence of the United States
" the eighty first"

" Present the Honorable George Manienn
" Judge and Parnell Munson Sheriff of
" Lake County"
" Attest A B Bates clerk"

" And that afterwards to wit on the
" third day of June AD 1857 the same
" being a day of the June term of said court
" for said year, further proceedings were
" had in said court in said cause
" which are entered of record in the
" words and figures following to wit:

"Joseph Ball"

"96"

"vs."

"Appeal"

"Sylvander E. Miller executor"

"and Elizabeth Miller executrix"

"of the estate of Henry Miller deceased"

"Appellants"

"~~the~~ the deposition of ^{It appears}
ing to the court that George Strong and Ed-
min Strong were taken before Daniel S.
Wood Justice of the Peace in Cook Coun-
ty in the State of Illinois and that the
said deposition is informal by reason
of no certificate under the great seal of
the said State or under the seal of the
proper court of the said county of Cook
showing the official character of the
said Justice of the Peace wherein such
deposition was taken, by agreement of
said parties the said informality is
waived"

And that afterwards to wit on the
third day of June AD 1837 the same
being also a day of the June term of
said court for the year last aforesaid
further proceedings were had in said
court in said cause which are enter-
ed of record in the words & figures following viz:

337

9 "Joseph Ball"

"96" "vs."

"Alexander E. Miller, executor"
 "and Elizabeth Miller executrix,"
 "of the estate of Henry Miller deceased,"
 "Appellant"

"Appeal"

"Now come
 said parties, the said plaintiff by Wil-
 liams his attorney, and the said defend-
 ants by Wainwright their attorney and
 thereupon on motion of the said plaintiff
 it appearing to the court that the appeal
 bond heretofore taken and filed herein is
 insufficient it is ordered that the said
 appellants file a new and sufficient
 appeal bond herein

And that afterwards
 to wit on the thirteenth day of June A.D.
 1837 said day being also a day of the
 aforesaid June term of said court
 further proceedings were had in said
 court in said cause which are enter-
 ed of record in the words and figures
 following to wit

"Joseph Ball"

"vs"

"96"

"Alexander E. Miller executor and
 "Elizabeth Miller executrix of the
 "Estate of Henry Miller deceased"
 "Appellants"

"Appeal from
 County Court"

"Now come said

337391

10 " parties by their respective attorneys and the
" court being now fully advised in the prem-
" ises it is ordered that the judgment of the
" court below be affirmed in favor of the
" said plaintiff for the sum of Fifty dollars
" and that the said plaintiff pay the costs
" herein and thereupon the said defendants
enter their motion for a new trial, and
the court being fully advised in the prem-
ises it is ordered that the said motion
be, and the same is hereby overruled
to which decision of the court overruling
said motion the said defendants except,
thereupon it is ordered that the said
plaintiff have and recover of the said
defendants the aforesaid sum of fifty
dollars and that he have execution
therefor, and it is further ordered
that the said defendants have and
recover of the said plaintiff their costs
and charges as well in the court below
as in this court in this behalf expend-
ed and that they have execution
therefor, And thereupon the said
Defendants pray an Appeal herein to
the supreme court which is granted
on condition that the said defend-
ants enter into bond before the clerk
of this court within twenty days from

11 " ~~from~~ this date in the penal sum of two
11 hundred dollars signed by the said
11 defendant Elizabeth Miller Executrix
11 as aforesaid and by E. M. Waines
11 as surety and it is further ordered
11 that the said defendants have ten
11 days from this date in which to file
11 their bill of exceptions herein "

And that afterwards to wit on
the 27th day of June A.D. 1857 ^{appeal} ~~an appeal~~
was filed in the office of the clerk of said
court which is in the words and figures
following to wit:

" Know All Men by these Presents
11 that we Elizabeth Miller Executrix of
11 the estate of Henry Miller deceased as
11 principal and Elijah M. Waines as sure
11 ty are held and firmly bound unto Joseph
11 Ball in the penal sum of two hundred
11 dollars lawful money of the United States of
11 America, for the faithful payment of which
11 we bind ^{ourselves} our heirs, executors and administra
11 tors jointly and severally by these presents
11 in witness whereof we have hereunto set
11 our hands and seals this 27th day of June
11 A.D. 1857 "

" The condition of the above obligation

12 " is such that whereas at the same term of the
Lake County Circuit Court, for said year
a judgment was rendered in favor of the
said Joseph Ball and against the Execu-
tors of the estate of Henry Miller decea-
sed, for the sum of sixty dollars upon
a claim filed in the probate court and
appealed to the said circuit court from
which judgment the said Executors
have taken an appeal to the Supreme
court, Now therefore if the said Execu-
tors shall pay or cause to be paid
the judgment costs interest and dam-
ages in case said judgment shall be
affirmed and shall also prosecute their
said appeal with due diligence then this
bond to be void ^{and of no effect}, otherwise of force

Eli'abett Miller *Eial*
Elijah M. Maines *Eial*

And that afterwards to wit on the 3rd day of May AD 1858 a stipulation was filed in the office of the clerk of said court agreeing that a copy of bill of exceptions be filed as of the September Term of said court in lieu of the original bill. which said stipulation is in the words and figures following to wit

"Lake County Circuit Court
Joseph Ball

vs

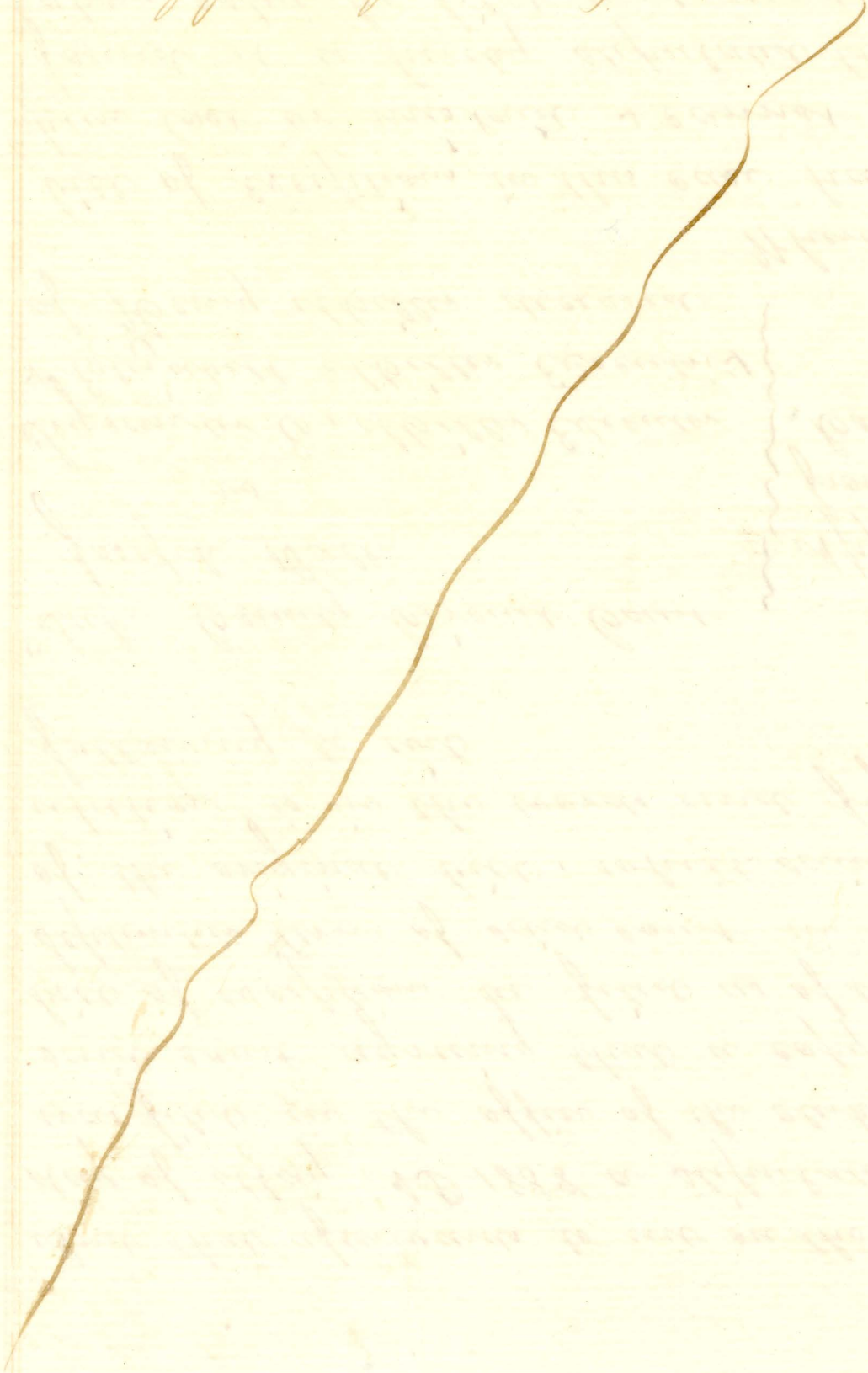
Alexander E. Abillee Executor
& Elizabeth Abillee Executrix
of Henry Abillee deceased

} Appeal
from Co.
Court

Whereas the bill of exceptions in this case having been lost or mislaid & cannot be found it is hereby stipulated that above copy be filed and made a part of the record in the above entitled cause in lieu of the original and that the clerk of this court file the same as of the September term for 1857, Waukegan April 1st 1858

Parks & Waines attys for Defendants
Ferry Clark & Williams Attys for Plaintiff

The copy of bill of exceptions which
was filed as by the foregoing stipula-
tion as of the September term of the
circuit court aforesaid is in the words
and figures following to wit,



15 "State of Illinois"

"Lake County Circuit Court"

"Joseph Ball"

"vs."

"Alexander E. Miller Executor

"& Elizabeth Miller Executrix of

"the Estate of Henry Miller deceased"

"Appeal from

"Lake County

"Be it re-

"membered that on the day of June

"in the year of our Lord one thousand eight

"hundred and fifty seven it being one of

"the days of the June term of said circuit

"court for said year this cause came on

"to be heard before said circuit court

"before the Honorable George Manierre pre-

"siding judge in an appeal from the Lake

"county court sitting as a court of probate

"parties being in court.

"The Plaintiff claimed fifty

"dollars against the Estate of Henry Miller

"deceased for cutting Trees by Henry Mil-

"ler in his life time upon the land of

"plaintiff. The Defendants claimed that

"the timber cut by their Testator was

"cut by mistake in the lines that

"divided the lands of the plaintiff & their

"Testator and that there was an agree-

"ment between the parties Henry Mil-

"ler & the said plaintiff that plaintiff

16 " should cut as much timber on his,
" Henry Miller's land as had been cut
" by mistake "

" The cause came on for trial before the
" court by consent of parties without the
" intervention of a jury "

" Truman P. Ball was called as a witness
" on the part of plaintiff and on being
" sworn testified as follows, I am son
" of the plaintiff who resides in Cook County,
" Illinois. I know about a claim of
" fathers against the estate of Henry
" Miller for timber cut on Plaintiffs
" land. It was cut five years ago
" last winter. I know of two settle-
" ments between father + Henry Miller ^{about saying timber}
" one when Mr Miller agreed to pay
" timber back again, which was in the
" spring after the timber was cut -

" Another, two years ago this spring
" in which Miller agreed to take up
" a certain mortgage against plaintiff
" amounting to about sixty dollars inter-
" est and all. I had conversation
" with Henry Miller in his lifetime
" about this claim. It was on Ruell's
" corner in Waukegan. He asked me when
" my father would be up, I told him
" soon - I asked about settlement

17 " He said he had agreed to take up the
" Mortgage and had written East to try
" and get it, that it was in the neigh-
" borhood of sixty dollars. The claim was
" for timber cut five years ago
" Cross Examination by Counsel for Defendants
" "My Father had
" ten acres of timber adjoining Millers -
" Miller cut eight or nine trees alto-
" gether for Plank Road - They were
" large oak trees - The largest on this
" land - He (Miller) also cut some trees
" on fathers land the Spring following -
" The first was claimed by Henry Miller
" to have been cut through mistake
" - I told him that Plaintiff had left
" those trees for particular purpose - Miller
" admitted that he had cut the trees
" - Said he thought ^{that} he had not got over
" the line - He acknowledged afterwards
" that he had cut them from Plaintiffs
" land - My father & I went down to Mr
" Miller's & we three went together to the
" woods for the purpose of ascertaining the
" number of trees cut on our land and the
" kind of trees - This was the time all
" this conversation was had - We found the
" stumps & counted them & traced the logs to bank
" of the River. That was the time he from

15 " ised to pay in timber, He also said the summer af-
" ter that, that plaintiff should cut until he
" was satisfied and defendant Henry Miller was
" satisfied. ~ Some of the first trees were
" cut considerable over the line - He said that
" his men had cut them and that he did
" not know it, ~ These were very large choice
" trees and had been reserved by Plaintiff for
" fence stakes, ^{for his place} ~ Last trees I know noth-
" ing about the cutting of except what my
" father and defendant said, Plaintiff cut
" one smallish tree some three or four years
" ago. I think it was in the spring, De-
" fendant was living in Waubesa Lake
" county at the time. It was sometime be-
" fore I had the talk with defendant
" Miller on Buell's corner. If it was
" four years ago that last trees were cut,
" then conversation was ^{two years ago.} At the time Plaintiff
" got the one tree he and I were intending
" to get more, but as we were going for another
" tree Henry Miller's son Seymour, forbid
" us cutting timber, said he would write
" to Henry Miller who was living then
" at Waubesa and see about it, Seysan-
" der said that he was in possession of the
" place. I never had any other talk with
" defendant Henry Miller about this matter
" ~ Father in the first arrangement was to

" have enough trees or timber to make up for
" Eight or Nine trees. Defendant had no
" such large trees left on his place as there
" he cut from ours. My father told me he
" had made the last agreement with
" defendant Henry Miller. Some time
" after that I met defendant Henry Miller
" in Waubesa & I asked him whether
" or he had agreed to get up the mortgage,

" he said he had and that he had
" written on for it but had not received it
" I know that soon after his son forbid
" our cutting the timber his father sold the
" land & He said nothing about Plaintiff
" getting the timber off the land - I can-
" not say how much the trees were worth

" They were large oak trees. I have
" known of trees being sold for six or eight
" & even fifteen dollars. They might have
" been two feet or more through. Largest
" on the land. Henry Miller had a large
" body of timber two or three trees were cut
" fifteen or twenty rods from the line, others
" near the line. Miller said to my father
" or go and take even fifty dollars worth of
" trees and he would be satisfied and take
" them when you please and where you
" please. Plaintiff said that if he could
" take his own time to get them off he would

20 " be satisfied - I understood that mortgage was
" not paid and is not now. That Tree was
" taken by plaintiff three or four years ago -
" Seysander forbid us taking ^{the} ~~three~~ trees - I
" know of ^{three} ~~these~~ trees which we got at that time
" - two were from our own land - we were
" going after more timber - we were just
" at bridge on O Plain river. Seysander
" asked if plaintiff cut that ^{tree} ~~timber~~ on his
" fathers land. Plaintiff said yes - then
" I forbid you he said - Then we went
" and got a couple of trees from our own
" land - This one tree was cut to apply
" on the last lot of trees which Miller cut
" on fathers land & was cut a few feet
" from the line - It was not to pay for
" first timber that was cut by Miller -

" Plaintiff told me two years ago last
" March he had made bargain about
" the mortgage. In conversation on Rude
" corner Miller told me that fifty dollar
" was the sum agreed on for the trees but
" that he preferred to take up the mortgage
" if he could get it because he thought he
" could get it perhaps a little less & that
" he had written to see "

" The Depositions of George Strong
" and ^{Edwin Strong} taken on the part of defendants
" at Wheeling in Cook County Illinois

21 " on the 20th day of April A.D. 1837.

" George Strong's Deposition was
" read as follows. My age is forty four
" years Residence Town of Wheeling Cook
" County Illinois. I am acquainted with
" plaintiff Ball and was acquainted with
" Henry Miller in his life time. I have
" been acquainted with Ball about twelve
" years - acquainted with Henry Miller
" as a neighbor - I do not know of any
" timber being cut by Henry Miller or any
" person or persons in his employ on land
" owned by the Plaintiff - I know of
" Ball cutting timber which he Ball
" said was on Millers land three years
" ago this present month, he cut three
" or four trees ~~doe~~^{does} not know how they
" compare with any that may have been
" cut on Ball's land. Plaintiff stated that
" he was cutting in payment for timber
" cut by Henry Miller on his, Ball's, land
" - I had a conversation with Plain-
" tiff about two or three weeks afterwards.
" Ball said that he expected that
" Miller would sue him for cutting the
" timber but he could prove that Mil-
" ler let him have it for timber that
" Miller cut on him. At the time I saw
" plaintiff cutting timber on Henry Millers

22 "land he Miller resided at Waubesa as
"I supposed."

"Crop examination by Plaintiff"

"It was from six to twenty rods South
"of the fence supposed to be the line of
"Miller's timber that I saw plaintiff cut
"ling timber. The trees were about
"two feet in diameter, of white oak, and
"bur oak. The trees were not far
"apart. The trees were cut south of
"the land claimed by Ball between the
"slough and river."

"The Deposition of Edwin Strong was then
"read on the part of Defendants as follows"
"My age is forty seven years occupation far-
"mer residence Wheeling Cook county,
"Illinois. I am acquainted with the
"plaintiff Ball and was acquainted with
"Henry Miller in his lifetime been acquaint-
"ed with Ball twelve or thirteen years
"was acquainted with Miller as a
"neighbor. I did not know of Miller
"or any person in his employ cutting
"timber upon land claimed by Joseph
"Ball. The Plaintiff told me that
"Henry Miller deceased had cut three
"trees on his Ball's land and that
"he Ball was then cutting on Miller's

" land for the payment of ^{the} trees taken by
 " Miller. Seen Ball cutting one Burr
 " oak and ^{then} that he said ^{that} he had cut
 " two before. The timber was cut in
 " the month of April three years ago.
 " Henry Miller resided at Waukegan at the
 " time I saw Ball cutting the timber as I
 " have above stated."

"Crop Examination by Plaintiff"

" I saw Plaintiff cutting
 " timber from ten to fifteen rods from
 " Millers North line, South of it from
 " ten to fifteen rods. South of my south
 " west corner. The timber was cut by
 " Ball about three years ago."

"Trueman P. Ball Recalled by defendants"

" On the former trial I stated nothing
 " about the three last trees being cut on
 " Plaintiffs land. I was asked nothing
 " about them. I think nothing was said
 " about more than the one tree. I think
 " I was not asked if plaintiff ever got
 " any timber under agreement. I don't
 " think I was asked whether any trees
 " were got in payment. I think it
 " was spoken of. I think I was asked
 " whether plaintiff had not cut one when
 " forbidden. We cut two or three on
 " our own land at that time and one

"Crop Examination by plaintiffs"

"The time mentioned
 "in the Depositions when father cut from
 "Miller's land is the same time the one
 "tree was cut and the cutting of the last
 "trees by Miller on our land was same
 "time as is mentioned by the witnesses
 "in the depositions. The Location is the
 "same mentioned by them, Plaintiff never
 "cut but one tree. I know plaintiff
 "never cut any at any other time; I
 "don't believe plaintiff ever cut any other
 "I lived at home & drove the team
 "invariably. Since the depositions have
 "been given I have been on the ^{premises} ~~premises~~
 "and there are no such stumps on the
 "ground as noticed by the witnesses
 "from which as they say my father cut
 "the trees. I found the stump of the
 "tree that plaintiff cut. It was bur
 "oak or white oak"

"Here the parties
 "rested their case. The above and
 "foregoing being all the evidence given on
 "either side,"

"The Court took the case under advise
 "ment and at this the June term

of said court for the year 1857 the court found fifty dollars for plaintiff thereupon the defendants moved for a new trial on the ground that the finding was against the law and the evidence in this case which motion on the 13th day of June 1857 was overruled by the court to which the defendants then and there excepted.

And the said defendants now here in open court tender this their bill of exceptions and pray that the same may be signed & sealed by this court which was according done

Seal


Joseph Ball

vs

Leysander E. Miller executor
 and Elizabeth Miller executrix
 of the estate of Henry Miller
 deceased

} Appeal
 from
 County
 Court

State of Illinois } ss.

Lake County }

I Augustus B. Cotes
 Clerk of the circuit court in and for the
 county of Lake in the State of Illinois
 do hereby certify the foregoing to be a
 true and correct copy from the rec

ords and files in my office of the appeal
bond, supersedeas, stipulation, copy of bill
of exception filed as per said stipulation
and of the records of the proceedings
of said court in said cause, and
of the whole record of such proceedings

In Testimony Whereof I have
hereunto set my hand and
affixed the seal of said court
at Waukegan in said county
of Lake this third day of
May AD 1888

A. B. Cotes clerk
per A. B. Cotes deputy

State of Illinois

In Supreme Court of Illinois

Lysander & Miller Executors
Elizabeth Miller Executrix
of the Estate of Henry Miller deceased
vs
appellants

Appeal from
Lower

Joseph Ball

appellee
April Term 1858

Now come the said
appellants by C. C. Schae their attorney
and say that in the record and proceedings
aforesaid and in the judgment aforesaid
there is manifest error in this Court
1st There is error in the ^{proceedings of the} said Court in
overruling the motion for a new Trial

2^d There is also error in the rendition of
the judgment in favor of Joseph Ball
appealed when the Judgment should have
been in favor of the appellants -

And the said Lysander & Miller Executors of
Elizabeth Miller Executrix of the Estate of
Henry Miller deceased pray that the
Judgment aforesaid in the same aforesaid
may be annulled and altogether set aside
for nothing and that they may be restored
to

C. C. Schae

Atty for Appellants

242

In Supreme Court

Seymour & Miller
vs et al. appellees

vs

Joseph Ball
appellant

Filed May 5th 1858

L. Leland
Clerk

Asy'd L. L.

State of Illinois
Supreme Court 3^d Division

Lysander & Miller Executors of
Elizabeth Miller Executrix
of the Estate of Henry Miller Deceased
vs
Joseph Ball

} Appeal from
Salem County
Circuit Court

It is stipulated
in this case that the time for filing the
Record be extended to Tuesday the third
week of the April Term of this Court for
1858. without prejudice to either party
April 19th 1858.

Forry Counsel & Friends
Atty for deft

Paul & Harris
Atty for Plaintiff

242

The Supreme Court
3^d Division

Sysman & Miller Esq
& al. vs

Joseph Ball

Deputations

Filed April 22. 1858
Leland
clerk

State of Illinois

In Supreme Court & Circuit

Sysan an & Miller Executors &
Elizabeth Miller Executrix
of the Estate of Henry Miller Decan
vs Appellants

Appeal from
Circuit

Joseph Ball

appearing April 2, 1858

Cassius County J. Leachin de Parks attorney
for the above named appellants
being sworn says on the third day
of the present term of this Court
this appellant filed a stipulation of
the parties by their respective attorneys
upon which stipulation the time for
filing the record of the Court below
was extended until Friday. This appellant
then supposed that it would give ample
time to find some missing papers
that were missing from the ^{files of the clerk of the} Court
below. This appellant further says that
he expected said record would have
been forwarded last week but has
not yet received it. This appellant further
says that he has been to the clerk and
don't believe that the delay is in consequence
of the clerk ~~of~~ of the Court below being
unable to find said lost papers

or otherwise supply their place. This
account has telegraphed to San Francisco
to day to find record whether free
or not. And this account has been
to him that said record will be
here by Monday morning & perhaps
sooner. This account therefore prays
that the time for filing said record
may be extended a sufficient time
to procure the same.

Given & Subscribed by me. C. C. Parks

this 3^d day of May 1858

L. Leland Clerk

by J. B. Rice Deputy

242

Supreme Court - 3 Div

Lysander E Miller

Ex Chat

ms

Joseph Ball

affidavit

Filed May 4, 1858

L. Leland
Clerk

State of Illinois

Ill. Supreme Court 3rd Grand Term

Sysander & Mich. Executors

Elyzabeth Miller Executrix of the

Estate of Henry Miller Deceased
Appellant

Appel from
Lower

Joseph Ball
Appellee

This was an appeal from the Lower Court
sitting as a Court of Probate to the Lower
County Circuit Court

15

Defendant filed in County Court a claim
against the Estate of Henry Miller deceased
of \$50 for cutting trees by Henry Miller
in his lifetime upon the Land of ~~Ball~~
~~Ball~~ Defendant - The ~~defendants~~ Plaintiff
claims that the timber cut by their
testator was cut by mistake in the
lines that divided the Land of Defendant
and their Testator. and that there was
an agreement between the parties the
said Henry Miller & Joseph Ball that

16

Ball should cut as much timber
on his Miller's Land as had been
cut by mistake.

The Cause came on for Trial before the Circuit
Court by Consent without the intervention of a jury.

Freeman S. Ball was called as a witness
by Plaintiff who resides in Cook
County Illinois - I know about a claim
of father against the Estate of Henry Miller
for timber cut on Father's land - I was cut
five years ago last winter I know of two
settlements between father & Henry Miller
about said timber One when Mr Miller
agreed to pay timber back again which
was in the Spring after the timber
was cut Another two years ago this
Spring in which Miller agreed to take
up a certain mortgage against
Plaintiff amounting to about Sixty Dollars
interest and all. I had conversation
with Henry Miller in his lifetime
about the claim. I was on business once
in Nauvoo. He asked me when
my father would be up. I told him
some. I asked about settlement he said
that he had agreed to take off the
mortgage and had written last to my
father that it was in the neighborhood
of Sixty Dollars the claim was for
timber cut five years ago

20 The deposition of George Strong Taken April
20 1857.

21 My age is 44 years I reside in the
Town of Whiting Cook County Illinois
I am acquainted with (Capt.) Ball &
was acquainted with Henry Miller in
his life time - Have been acquainted with
Ball about 12 years, acquainted with
Henry Miller as a neighbor in his
life time. Do not know of any
timber being cut on land owned by
Ball. - I know of Ball's cutting timber
which he Ball said was a miller
sawed three years ago the present month
he cut three or four trunks. Do not
know how they compare with any that
may have been cut on Ball's land
Ball stated that he was cutting no
payment for timber cut by Henry Miller
on his Ball's land. I had a conversation
with Ball about two or three weeks
afterwards. Ball said that he expected
that Miller would sue him for
cutting the timber but he ^(Ball) could prove
that Miller let him have it for timber
that Miller cut on him. At the
time I saw ~~Ball~~ ^{Ball} cutting timber on

22 Miller's He Miller Resided at Washington
Camp Examination

The trees were about two feet in
diameter of white oak & Burr
oak

Deposition of Edwin Strong Made June
April 20th 1857

My age is 47 years occupation
Farmer Residence Wheeling Cook Co
Illinois - I am acquainted with
Joseph Ball (Deft below) and
was acquainted with Henry Miller
in his lifetime did not know of
Miller or any person in his employ
cutting timber on Ball's land
Ball told me that Henry Miller
(now deceased) had cut three trees
on his Ball's land and that
he Ball was then cutting on
Miller's land for the payment of
the trees on his Ball's land &
that he Ball was then cutting
23 on Miller's land - saw Ball cutting
one Burr oak. He said that
he had cut two before - The timber
was cut in the month of April

three years ago - Henry Miller
Resides at Nashville at the
time I saw Ball calling the
tribe as I have been stated

24 The Court took the case under advisement
and at the June Term for 1857. The
Court found \$50 for ~~defendant~~ Plaintiff
(below) Defendant below move for
a new trial on the grounds that
the finding was against the
law and the evidence

June 18 1857. motion overruled by
the Court and Sept. (Below) then
& then excepted. Bill of
exceptions filed

27 Error assigned

1st Erring motion for new trial

2^d General assignment

W. H. Parks

att'y for appellant

Abstract

Filed May 5, 1858
 L. Leland
 Clerk