

No. 12977

Supreme Court of Illinois

Eitzell et al

vs.

Miller

71641  7

STATE OF ILLINOIS,

SUPREME COURT.

Third Grand Division

No. 143.

Prepared
Cathell
vs
Miller

15 classes - 195

IN THE SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION, APRIL TERM, A. D., 1860.

HENRRY EITZELL and
FRANKLIN REITZELL,
Administrators of Estate of Philip
Reitzell, Deceased,

Appellants,

APPEAL FROM STEPHENSON.

vs.

JOHN MILLER, *Appellee.*

This was an appeal from an order of the County Court of Stephenson county, in the State of Illinois, allowing a claim in favor of John Miller, Appellee herein, against the estate of Philip Reitzell deceased, and tried in the Stephenson Circuit Court before Hon. BENJAMIN R. SHELDON, Judge, and a Jury, at the December term, 1859.

- 1 Appeal bond in appeal from the County Court.
- 2 Record of proceedings in County Court hereinafter set forth in bill of exceptions.
- 6 Process from Circuit Court in appeal.
- 8 January 18, 1860, issue—trial. January 19, 1860, verdict for appellee—damages \$3,255 65-100—motion of appellants for new trial.
January 25, 1860, appellants file points on motion for new trial and in arrest of judgment.
- 9 February 2, 1860, appellee remits \$1,179 17-100; motion for new trial overruled and judgment against appellants for \$2,076 48-100 to be paid in due course of administration; judgment against appellee for costs; appellants pray appeal; order of appeal.
- 10 February 4, 1860, order of court by consent of parties allowing two weeks to settle bill of exceptions.
February 16, 1860, appellants file bill of exceptions showing—transcript of record of Probate Court as follows:
- 11 Stephenson County Court, March Term A. D., 1859.
March 7, 1859, comes the appellee by his Attorneys, and F. W. S. Brawley as counsel for two of the heirs of Philip Reitzell deceased, pleads general issue and statutes of limitations; court after hearing the evidence continued further hearing to March 15, 1859.
- 12 March 15, 1859, appellee files his proof of notice to appellants of intended presentation of his claim, and F. W. S. Brawley appears for appellants for the purpose of taking advantage of any defect in the proceedings therein.
March 16, 1859, judgment in County Court against appellants for \$3,143 79-100, and order for execution thereon.
And on trial of this cause (in the Circuit Court) appellee, as being his claim against estate of Philip Reitzell deceased, presented an account marked
- 14 "A," in the following words and figures:

"Estate of Philip Reitzell deceased,

"To John Miller, Dr.,

"To this amount due for bal. on ac., & interest, \$5000 00."

"Freeport, May 7th, 1852."

"Filed May 7th, 1852, Wm. Preston, Clk."

And the submission to arbitrators and award marked exhibit B and C, hereinafter copied.

- 15 Appellants without waiving any benefit, right or advantage to them, accruing on account of any discontinuance or irregularity on part of appellee at any time in the prosecution of his claim, plead general issue and the several statutes of limitations; that this claim was not filed or exhibited in the Probate Court within two years from granting of letters in estate of Philip Reitzell deceased; that this cause was not commenced within five years from November 5, 1849; that the claim was not prosecuted within seven years from the death of Philip Reitzell, and so was barred.

Appellee called John A. Clark as a witness and exhibited to him a writing, marked exhibit "B," purporting to be an award, in the words and figures following:

"STATE OF ILLINOIS, }
County of Stephenson. } ss.

- 16 To all to whom these presents shall come : We, John H. Adams, John K. Brewster and John A. Clark, send greeting :

Whereas, there are several accounts depending, and divers controversies and disputes have arisen between Henry Reitzell and Franklin Reitzell, of the County of Stephenson, and State of Illinois, Administrators of the estate of Philip Reitzell deceased, late of said Stephenson county, of the first part, and John Miller of the said county of the second part, and Jonathan Reitzell of the said county of the third part, and whereas, for the putting an end to the said controversies and disputes, they, the said Henry Reitzell and Franklin Reitzell, Administrators &c., as aforesaid of the first part, John Miller of the second part, and Jonathan Reitzell of the third part, by their agreement of submission duly executed and bearing date August 16th, A. D., 1850, have agreed and promised, and also by their several bonds or obligations bearing date August 16th, A. D., 1850, have reciprocally become bound each to the other in the penal sum of five thousand dollars, to stand to and abide perform and keep the award, order and final determination of us, the said John H. Addams, John K. Brewster and John A. Clark, so as the said award be made in writing under our hands and seals, and ready to be delivered to the parties in difference on or before the twenty-sixth day of August instant as by the said agreement of submission and bond will fully appear. Now know ye that we the said arbitrators, whose names are hereunto subscribed, taking upon ourselves the burden of the said award, and having first fully examined and duly considered the proofs and allegations of all the said parties, who were duly notified of the time and place at which the said award would be made, do make and publish this our award between the said parties in the manner following: First, we do award and order that John

- 17 Miller, party of the second part as aforesaid, is entitled to receive from Jonathan Reitzell the sum of four hundred and twenty-seven 94-100 dollars, (\$427 94) and we do award and order that the said Jonathan Reitzell pay the said sum of \$427 94 to said John Miller. Second, we do award and order that said John Miller, party of the second part as aforesaid, is entitled to receive from the estate of Philip Reitzell deceased, the sum of two thousand and seventy-six 48-100 dollars, (\$2,076 48) and we do award and order that Henry Reitzell and Franklin Reitzell, Administrators as aforesaid, pay to said John Miller the said sum of \$2,076 48. Third, we do award and order that the unsettled notes and accounts belonging to the late firm composed of Philip Reitzell, Jonathan Reitzell and John Miller, a schedule of which unsettled and unpaid notes and accounts is hereto annexed marked schedule "A," shall be equally divided between the parties of the first, second and third parts, *i. e.* that Henry Reitzell and Franklin Reitzell, Administrators as aforesaid, have one third part of said unpaid notes, and accounts, and that John Miller have one third part of said notes and accounts, and that Jonathan Reitzell have one third part of said unpaid notes and accounts.

The said award so made as aforesaid by us, the said arbitrators, has sole reference to partnership accounts and demands existing between the members of the late firm composed of said John Miller, Jonathan Reitzell and Philip Reitzell deceased, trading as partners, in said County of Stephenson, and our said award as aforesaid has no reference to demands or accounts existing between said parties or their representatives, otherwise than as partners as aforesaid, or otherwise than as springing from said partnership transactions.

- 18 Lastly, we do award, that upon the performance, severally, by the said parties of the first, second and third parts, of the orders, and award hereby made, that the said parties shall respectively execute to each other general releases of all claims and demands touching or concerning the premises afore-

said or relating to the same. In testimony whereof, we have hereunto set our hands and affixed our seals at Freeport, this 22d day of August, A. D., 1850.

In presence of
CHAS. A. CLARK.

JOHN H. ADDAMS. [SEAL.]
JOHN K. BREWSTER. [SEAL.]
JOHN A. CLARK. [SEAL.]

19 Schedule A referred to in said award.

Twelve notes amounting to \$164 11.

Accounts against divers persons, \$788 28;"

Filed in Stephenson Co. Court, March 7, 1859.

Witness testified that his brother Charles A. Clark, subscribing witness to said award is dead; that said award is in the hand-writing of said Charles A. Clark, and signed by witness, John K. Brewster and John H. Addams.

John Ruth sworn as a witness; and Appellee exhibits to him a writing marked "C," purporting to be a submission to arbitrators in words and figures following:

"Whereas, divers disputes and controversies have arisen and are now depending and unsettled between Henry Reitzell and Franklin Reitzell, of the county of Stephenson and state of Illinois, administrators of the estate of Philip Reitzell, late of said county, deceased, of the one part, and John Miller of the same County, of the second part, and Jonathan Reitzell of the same County, of the third part: Now, therefore, for the purpose of settling and determining such disputes and controversies, it is hereby mutually agreed and understood by and between the said parties that the same shall be referred and submitted to the arbitrament and determination of John H. Addams, John K. Brewster and John A. Clark, all of said County and State, or any two of them, and the said arbitrators, or any two of them, as aforesaid, shall make and publish their award in writing under their hands and seals, and deliver the same to the parties, or to either of them, who shall desire the same, on or before the twenty-sixth day of August instant; and it is hereby further agreed and understood by and between the said parties, that the said arbitrators, or any two of them as aforesaid, shall take and receive a statement of the joint affairs or joint stock in trade of said Philip Reitzell, in his life time, and said John Miller and said Jonathan Reitzell, which was made in writing by said Philip Reitzell, in the year eighteen hundred and forty-four, (1844) to be produced and shown by said parties, as a basis upon which to commence and make and publish their said award in writing as aforesaid; and it is also hereby further agreed and understood by and between the said parties, that this submission may be made a rule of the Circuit Court, within and for the county of Stephenson aforesaid.

In witness whereof we, the said parties, have hereunto set our hands and seals this sixteenth day of August, A. D., 1850.

H. R. REITZELL, [SEAL.]
FRANKLIN REITZELL, [SEAL.]

*Administrators of the estate of
Philip Reitzell, deceased,*

JNOA. REITZELL, [SEAL.]
JOHN MILLER, [SEAL.]

Executed in presence of
JOHN RUTH.

On the back of which appears the following indorsement, to wit: "Filed March 15th, 1859. D. H. Sunderland Co. Clerk."

Witness thinks he signed this writing as subscribing witness; so long since that he could not remember whether the writing was signed by the persons purporting to execute it or not; to the best of his recollection it was, and in his presence.

F. W. S. Brawley testified that the paper marked "C" was in his hand writing, but that he knew nothing of its execution; not executed in his presence.

Appellee then offered in evidence writings marked exhibits B and C. Appellants objected for the following reasons, viz:

"1. The administrators, under the laws of Illinois, had not the legal capacity or authority to bind the estate by an arbitration.

2. The pretended award is not evidence to prove the account presented in this case.

3. No publication or delivery of the pretended award shown.

22 4. The account was barred by the statutes of limitations.

5. The pretended award was not final and certain.

6. Pretended award defective in not showing that arbitrators were sworn, and it no where appearing that the arbitrators were sworn.

7. Pretended award does not pursue the pretended submission.

8. Plaintiff has suffered a discontinuance in the prosecution of his claim against the estate.

9. And for other reasons urged," but the court allowed said writings ("B" and "C") to be given in evidence and appellants excepted.

Appellee then recalled John A. Clark and exhibited to him a paper

23 marked "D," containing accounts amounting as follows:

Book accounts against divers persons, \$427 87

Book accounts against divers persons, 557 00

24 Notes against divers persons, 827 58

25 "Company stock to the following

John Miller, amount,

Dr.
\$3,220 86

Jonathan Reitzell, amount,

2,220 17

John Ruth, do

100 40

Massena Mitchell, February 1, '41, 12344, int. 2184,

145 28

Stevenson & Co., March 26, '42, 307 90, int. 36 84,

344 74

George Furster, 80 00, int. 11 20, pd \$27 00,

64 20

Jacob Raber, about

10 00

Joseph Miere,

10 00

C. G. Epley,

70 88

Cr.

\$6,186 53

"By saw mill property,

\$3,200 00

Book accounts, outstanding notes of hand, 1811,45,

900 00

1 yoke cattle, (Jonathan),

30 00

1 wagon, do

30 00

1 fanning mill, do

12 00

1 yoke cattle, P. Reitzell,

55 00

1 yoke work cattle, P. Reitzell,

65 00

1 plow, do

5 00

1 plow, John Miller,

5 00

1 stove and pipes,

10 00

1 pr mill stones,

70 00

Paid for Ruth's land,

385 45

Book account, P. Reitzell,

700 00

Claim account, do

694 64

1,394 66

\$6,162 11

John Ruth, Cr. on book,

\$13 00

Paid for Ruth's land,

50 00

Salary in store,

150 00

\$213 00

To book account,

\$104 10

Wilson,

4 50

Hunt,

4 00

\$112 60 \$100 00

26 On the back of which is indorsed: "Filed March 7th, 1859. D. H. Sunderland, Co. Clerk."

Witness testified that paper "D" was before the arbitrators, and an indorsement thereon, signed by witness, Addams, and Brewster, in words and figures following, viz:

"The within statement of the affairs of the firm of Reitzell, Miller & Reitzell was taken by agreement of parties, as the basis of the settlement this

day made by the undersigned, who were chosen as arbitrators by the parties, August 19, 1850;" is in hand-writing of witness; witness is shown a paper marked "E," containing items of account as follows:

June 6, 1845. John Miller,	Dr.	
"To cash, per O. H. Wright,		\$54 00
May 11, 1847, do cash,		10 00
27 "1844, company stock,	Dr.	
Same items as on page 25 of this record,		\$6,186 53

Cr.

"By saw mill property, and other items, as on page 25 of this record, \$6,162 11.

John Miller, Dr. to claim of Sam. C. McClure,	\$1,825 00
Cr. paid Sam. C. McClure, items,	1,812 00
	<u>\$13 00</u>

28 Witness states that paper "E" and an indorsement thereon signed by witness, Addams and Brewster, in words and figures following: "The within statement of the affairs of the firm of Reitzell, Miller & Reitzell, was taken by agreement of parties as the basis of the settlement this day made by the undersigned, who were chosen as arbitrators by the parties, August 19, 1850," is in hand-writing of witness; paper "E" is indorsed, "Filed March 7, 1859. D. H. Sunderland, Co. Clerk."

Witness is shown a paper marked "F", containing accounts as follows, viz:

"Company stock,	Dr.	
Same items as on page 25 of this record,		\$6,186 53
29 "Company stock,	Cr.	
By saw mill of Leibshietz" and other items as on		
page 25 of this record,		\$6,162 11
County orders, \$77 01,		38 50
Account, P. Reitzell of Geo. Reitzell,		32 88
Dr. John Miller (Frankerbeger),		25 00
Advance on property sales,		300 00
		<u>\$6,558 49</u>

John Ruth Cr. on book,	\$13 00	
Cash pr Ruth's land,	50 00	
Service in store,	150 00	
		\$213 00
To book account,	\$104 10	
Wilson,	4 50	
Hunt,	4 00	
		<u>\$112 60</u>

30 "Jonathan Reitzell,	Dr.	
To Mattoch's claim,	735 00	
"By cash" and other items,		\$3,479 77
Due in store,	519 10	
Mattoch's claim,	735 00	
		<u>1,254 10</u>
		<u>\$2,225 67</u>

Witness testifies that paper "F" was before the arbitrators, and an indorsement thereon signed by witness, Addams and Brewster, in words and figures following: "The within statement of the affairs of the firm of Reitzell, Miller & Reitzell, was taken by the agreement of parties as the basis of the settlement this day made by the undersigned who were chosen as arbitrators by the parties, August 19, 1850" is in hand-writing of witness; paper "F" on the back is indorsed, "Filed March 7th, 1859. D. H. Sunderland, Co. Clerk."

31 "Witness thinks papers "D" "E" & "F" were used as indicated by indorsements thereon above set forth, and formed basis upon which award was

made"—John Ruth and Jonathan Reitzell were present with the arbitrators; thinks one of the administrators and perhaps both were present—all the parties except Franklin Reitzell were present; not certain as to him.

Paper marked "G," purporting to be "basis of award made by Brewster Clark and Addams in settlement of company accounts of administrators of P. Reitzell deceased, John Miller and Johnathan Reitzell, made August 19, 1850, the basis of such settlement, being a statement made by the late Philip Reitzell March, 1844; and agreed to by the parties above named" shown witness by appellee, containing items of accounts as follows:

"John Miller is credited by capital stock including \$100 40 of John Ruth, March 1, 1844, 3,321 26
Interest from March 1, 1844, to August 19, 1850, 1,286 91

\$4,608 20

		Dr.	
	To bonds and interest from Jan. 1, 1845,	\$1,003 13	
	Note and interest from Nov. 30, 1842,	585 00	
	Account and interest from May 27, 1844,	74 12	
	Sundry acc'ts and interest from March 1, 1844,	53 18	
32	Amount paid & int. from Jan. 30, 1849,	30 15	
	Plow &c., interest from March 1, 1844,	41 62	
	Assumed,	385 45	
	Interest on \$326 77 from March 1, 1844,	126 62	2,299 27
			\$2,308 93
	Credit by nett profits,		195 49
			\$2,504 42
	Jonathan Reitzell, credited by capital stock, sundry items and interest,	5,689 76	
	Dr. to amt. of mill property, sundry items and int.	6,299 70	
			609 94
	By nett profits,		182 00
			\$427 94
33	Administrators of Philip Reitzell dec.,		Dr.
	"To amt. agreed March 1, 1844,	1,394 16	
	" yoke oxen &c.,	233 08	
		1,627 74	
	Int. from March 1, '44	630 75	2,258 49
	Cr. by nett profits,		182 00
			2,076 49
	"Amt. due from Jno. Reitzell to Jno. Miller,	427 94	
	Amt. due from administrators of P. Reitzell dec., to John Miller,	2,076 49	
			\$2,704 43"

Whole amt. due John Miller, \$2,704 43"
On the back of which paper is indorsed, "filed Febr'y 24, 1859, D. H. Sunderland Co. Clerk." "Filed April 5, 1859, L. W. Guiteau Cl'k."

Witness thinks paper "G" is in hand-writing of John H. Addams; not certain. It was drawn up at time of arbitration; don't remember any thing else being before us, except what was in papers marked "D" "E" "F" & "G." The account marked "A" is in witness' hand-writing. Papers "D" "E" "F" & "G" remained in witness' possession; witness can't say how many copies of the award were made out; no recollection at all in regard to the number of copies of award made out; award, being paper marked "B," is in hand-writing of witness' brother.

On Cross Ex., this witness testified that he had already stated all he knew about copies of the award being made out; that he has no recollection whatever about it; has an impression not amounting to a recollection that we

were sworn; remember but little about it, except what appears upon the papers; (referred to by wit.) my impression is that abitrators were sworn by
 34 Esq. Montelius; quite positive he was there, and my impression is we were sworn; thinks John Ruth was a witness before the arbitrators; that he was clerk in the store of Reitzell & Co., or whatever the name was; no recollection that any one was sworn as witness; perhaps Ruth and Geo. Reitzell were and perhaps not; no recollection about it; whole thing is out of my mind.

Appellee then offered in evidence papers marked "D" "E" "F" & "G."—Appellants objected, and excepted upon court allowing said several papers to be given in evidence.

Thomas J. Turner for appellee testified he had known Henry R. Reitzell since he was a boy; witness was employed by appellee four or five years ago in reference to collecting his claim against the Reitzell estate; about that time appellee and Henry R. Reitzell came to witness' office and talked about the award; might have been five or six years ago; can't tell exactly when; Miller had been there several times before; appellee's counsel asked the witness "if Henry R. Reitzell and plaintiff (appellee) came to your office and talked about the award, what did they say?" to which appellants objected, but the court allowed the question to be asked and appellants excepted.—Plaintiff and Henry R. Reitzell came to witness' office together. Reitzell said they didn't want to have law about it; that they were neighbors and
 35 didn't want witness to commence suit about it. They talked a good deal; Miller remarked to Reitzell that if it was not paid he should sue, as he had waited long enough; said Reitzell had tried to wrong him out of the claim by preventing him from filing his account, but he had filed it; went out without doing anything; got a little cross before they went out; talked about Miller's claim not being filed in time; gone about half an hour and both came back; Miller wanted the papers from me; Reitzell said it ought to be paid; that only one member of the family was opposed to it, and he would go home and pay it any way. They then took the papers and went away; was after the claim was filed in the County Court. Testimony of this witness excepted to by appellants

Jonathan Reitzell for appellee, testified that he was present at the arbitration; both administrators were present; witness presented an account; can't say what administrators and Miller presented; witness examines papers "D" "E" "F" "G" above referred to; thinks these papers were before the arbitrators; was another matter—my individual account before the arbitrators, but not considered by them, at which witness was dissatisfied.

On Cross Ex., witness testified he had no knowledge of the arbitrators being sworn; didn't think it necessary they should be; had so much confidence in the men he didn't care whether they were sworn or not; they were not sworn to witness' knowledge; didn't see them sworn; witness was
 36 there all the time—long before they commenced and during their sitting.

On his direct examination resumed, witness stated that Jno. Ruth and Geo. Reitzell were at the arbitration, not sworn as witnesses, in knowledge of witness.

Appellee introduced as part of the files of said Probate Court in this cause the following notice:

Title of cause in County Court:

"To Henry R. Reitzell and Franklin Reitzell, administrators of the estate of Philip Reitzell deceased—

Gents: You will please take notice that on the first day of the March Term, A. D., 1859, of the Stephenson County Court, I will appear to make proof of my claim against the above named estate, according to law, at which time you are notified to appear.

Freeport, February 16th, 1859.

JOHN MILLER.

By Turner & Bright, Atty's for compl't and claimant."

John Miller's oath, that on the 22d or 23d day of February, A. D., 1859, he served a copy of this notice upon appellants by handing to each of them
 37 a copy in person; sworn and subscribed March 15, 1859, "as being his notice to the administrators under which his claim herein was prosecuted; this paper being marked "J" and filed in the County Court, March 15, 1859, and in the Circuit Court April 5, 1859.

"During the trial it was admitted and agreed by the parties, that Philip Reitzell died about March or April 1850; that letters of administration upon his estate were granted to the appellants by the Probate Court of Stephenson county, May 7, 1850; that the administrators gave notice for presentation of claims against said estate for adjustment at the August Term, A. D., 1850, of said Probate Court, said August Term terminating by adjournment August 7, 1850. Papers marked "A" "B" "C" "D" "E" "F" "G" & "J" were filed in the Probate Court as severally marked, and were all the papers sent from the Probate Court, and produced on the trial of this cause" in Circuit Court.

"The above and foregoing was all the evidence in this cause."

Plaintiff then asked the following instruction to the jury :

38 "If the jury find that the award of the arbitrators was a settlement and adjustment of accounts against the estate, and if the jury find for the plaintiff, then the plaintiff is entitled to interest from the date of the award," which the court gave as asked and appellants excepted.

This instruction filed January 19, 1860.

The jury find a verdict as follows : "We the jurors find for the plaintiff," (appellee) "and assess the damages \$3,255 65." Thereupon appellants moved the court for a new trial, and also in arrest of judgment, and filed points in writing, specifying the grounds therefor as follows :

39 Title of Court and cause.

1. The verdict of the jury not warranted by the law.
2. The verdict was contrary to the evidence.
3. Improper evidence was submitted to the jury.
4. Erroneous instruction of the court.

Points in arrest.

1. There was no proper filing of the appelle's claim, either in the court below or in this court.

2. There was no proper filing of the appellee's claim within the time required by the law.

3. The appellee's claim was barred by the statute requiring it to have been filed within two years from the granting of letters.

4. The appellee's claim was barred by the statutes of limitations.

40 5. The appellants were entitled to judgment in their favor on the record and proofs. This motion filed January 25, 1860.

Appellee remitted \$1,179 17-100 from his damages as found by the jury and the court overruled the motions of appellants for a new trial, and in arrest of judgment, to which appellants excepted.

41 Bill of exceptions filed February 16, 1860; February 29, appeal bond filed by appellants.

Errors assigned on the record.

1. The court below erred in admitting improper evidence to be given by claimant.

2. The court below erred in giving the instruction to the jury as asked by claimant's counsel.

3. That the verdict of the jury was contrary to the evidence.

4. That the verdict of the jury was not warranted by the law.

5. The court below erred in overruling defendants' motion for a new trial.

6. The court below erred in overruling defendants' motion in arrest of judgment.

7. The court below erred in rendering judgment on the verdict.

8. The court below erred in rendering the judgment in manner and form as it was rendered.

9. The court erred in rendering judgment for claimant, when by the laws of the land, such judgment ought to have been for defendants below.

JASON MARSH and
F. W. S. BRAWLEY,
Atty's for Appellants.

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Pittsford chol
2

Miller

Abstract

12977

Pileon April 10, 1860

L. Leland
Clerk

197

IN THE SUPREME COURT OF ILLINOIS,

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County of Stephenson. } ss.

- 16 To all to whom these presents shall come : We, John H. Adams, John K. Brewster and John A. Clark, send greeting :

Whereas, there are several accounts depending, and divers controversies and disputes have arisen between Henry Reitzell and Franklin Reitzell, of the County of Stephenson, and State of Illinois, Administrators of the estate of Philip Reitzell deceased, late of said Stephenson county, of the first part, and John Miller of the said county of the second part, and Jonathan Reitzell of the said county of the third part, and whereas, for the putting an end to the said controversies and disputes, they, the said Henry Reitzell and Franklin Reitzell, Administrators &c., as aforesaid of the first part, John Miller of the second part, and Jonathan Reitzell of the third part, by their agreement of submission duly executed and bearing date August 16th, A. D., 1850, have agreed and promised, and also by their several bonds or obligations bearing date August 16th, A. D., 1850, have reciprocally become bound each to the other in the penal sum of five thousand dollars, to stand to and abide perform and keep the award, order and final determination of us, the said John H. Addams, John K. Brewster and John A. Clark, so as the said award be made in writing under our hands and seals, and ready to be delivered to the parties in difference on or before the twenty-sixth day of August instant as by the said agreement of submission and bond will fully appear. Now know ye that we the said arbitrators, whose names are hereunto subscribed, taking upon ourselves the burden of the said award, and having first fully examined and duly considered the proofs and allegations of all the said parties, who were duly notified of the time and place at which the said award would be made, do make and publish this our award between the said parties in the manner following: First, we do award and order that John

- 17 Miller, party of the second part as aforesaid, is entitled to receive from Jonathan Reitzell the sum of four hundred and twenty-seven 94-100 dollars, (427 94) and we do award and order that the said Jonathan Reitzell pay the said sum of \$427 94 to said John Miller. Second, we do award and order that said John Miller, party of the second part as aforesaid, is entitled to receive from the estate of Philip Reitzell deceased, the sum of two thousand and seventy-six 48-100 dollars, (\$2,076 48) and we do award and order that Henry Reitzell and Franklin Reitzell, Administrators as aforesaid, pay to said John Miller the said sum of \$2,076 48. Third, we do award and order that the unsettled notes and accounts belonging to the late firm composed of Philip Reitzell, Jonathan Reitzell and John Miller, a schedule of which unsettled and unpaid notes and accounts is hereto annexed marked schedule "A," shall be equally divided between the parties of the first, second and third parts, i. e. that Henry Reitzell and Franklin Reitzell, Administrators as aforesaid, have one third part of said unpaid notes, and accounts, and that John Miller have one third part of said notes and accounts, and that Jonathan Reitzell have one third part of said unpaid notes and accounts.

The said award so made as aforesaid by us, the said arbitrators, has sole reference to partnership accounts and demands existing between the members of the late firm composed of said John Miller, Jonathan Reitzell and Philip Reitzell deceased, trading as partners, in said County of Stephenson, and our said award as aforesaid has no reference to demands or accounts existing between said parties or their representatives, otherwise than as partners as aforesaid, or otherwise than as springing from said partnership transactions.

- 18 Lastly, we do award, that upon the performance, severally, by the said parties of the first, second and third parts, of the orders, and award hereby made, that the said parties shall respectively execute to each other general releases of all claims and demands touching or concerning the premises afore-

said or relating to the same. In testimony whereof, we have hereunto set our hands and affixed our seals at Freeport, this 22d day of August, A. D., 1850.

In presence of
CHAS. A. CLARK.

JOHN H. ADDAMS. [SEAL.]
JOHN K. BREWSTER. [SEAL.]
JOHN A. CLARK. [SEAL.]

19 Schedule A referred to in said award.

Twelve notes amounting to \$164 11.

Accounts against divers persons, \$788 28;

Filed in Stephenson Co. Court, March 7, 1859.

Witness testified that his brother Charles A. Clark, subscribing witness to said award is dead; that said award is in the hand-writing of said Charles A. Clark, and signed by witness, John K. Brewster and John H. Addams.

John Ruth sworn as a witness; and Appellee exhibits to him a writing marked "C," purporting to be a submission to arbitrators in words and figures following:

"Whereas, divers disputes and controversies have arisen and are now depending and unsettled between Henry Reitzell and Franklin Reitzell, of the county of Stephenson and state of Illinois, administrators of the estate of Philip Reitzell, late of said county, deceased, of the one part, and John Miller of the same County, of the second part, and Jonathan Reitzell of the same County, of the third part: Now, therefore, for the purpose of settling and determining such disputes and controversies, it is hereby mutually agreed and understood by and between the said parties that the same shall be referred and submitted to the arbitrament and determination of John H. Addams, John K. Brewster and John A. Clark, all of said County and State, or any two of them, and the said arbitrators, or any two of them, as aforesaid, shall make and publish their award in writing under their hands and seals, and deliver the same to the parties, or to either of them, who shall desire the same, on or before the twenty-sixth day of August instant; and it is hereby further agreed and understood by and between the said parties, that the said arbitrators, or any two of them as aforesaid, shall take and receive a statement of the joint affairs or joint stock in trade of said Philip Reitzell, in his life time, and said John Miller and said Jonathan Reitzell, which was made in writing by said Philip Reitzell, in the year eighteen hundred and forty-four, (1844) to be produced and shown by said parties, as a basis upon which to commence and make and publish their said award in writing as aforesaid; and it is also hereby further agreed and understood by and between the said parties, that this submission may be made a rule of the Circuit Court, within and for the county of Stephenson aforesaid.

In witness whereof we, the said parties, have hereunto set our hands and seals this sixteenth day of August, A. D., 1850.

H. R. REITZELL, [SEAL.]
FRANKLIN REITZELL, [SEAL.]

*Administrators of the estate of
Philip Reitzell, deceased.*

Executed in presence of
JOHN RUTH.

JNOA. REITZELL, [SEAL.]
JOHN MILLER, [SEAL.]

On the back of which appears the following indorsement, to wit: "Filed March 15th, 1859. D. H. Sunderland Co. Clerk."

Witness thinks he signed this writing as subscribing witness; so long since that he could not remember whether the writing was signed by the persons purporting to execute it or not; to the best of his recollection it was, and in his presence.

F. W. S. Brawley testified that the paper marked "C" was in his hand writing, but that he knew nothing of its execution; not executed in his presence.

Appellee then offered in evidence writings marked exhibits B and C. Appellants objected for the following reasons, viz:

"1. The administrators, under the laws of Illinois, had not the legal capacity or authority to bind the estate by an arbitration.

2. The pretended award is not evidence to prove the account presented in this case.

3. No publication or delivery of the pretended award shown.

22 4. The account was barred by the statutes of limitations.

5. The pretended award was not final and certain.

6. Pretended award defective in not showing that arbitrators were sworn, and it no where appearing that the arbitrators were sworn.

7. Pretended award does not pursue the pretended submission.

8. Plaintiff has suffered a discontinuance in the prosecution of his claim against the estate.

9. And for other reasons urged," but the court allowed said writings ("B" and "C") to be given in evidence and appellants excepted.

Appellee then recalled John A. Clark and exhibited to him a paper marked "D," containing accounts amounting as follows:

23	Book accounts against divers persons,	\$427 87	
	Book accounts against divers persons,	557 00	
24	Notes against divers persons,	827 58	
25	"Company stock to the following		Dr.
	John Miller, amount,		\$3,220 86
	Jonathan Reitzell, amount,		2,220 17
	John Ruth, do		100 40
	Massena Mitchell, February 1, '41, 12344; int. 2184,		145 28
	Stevenson & Co., March 26, '42, 307 90, int. 36 84,		344 74
	George Furster, 80 00, int. 11 20, pd \$27 00,		64 20
	Jacob Raber, about		10 00
	Joseph Miere,		10 00
	C. G. Epley,		70 88

Cr. \$6,186 53

"By saw mill property,	\$3,200 00
Book accounts, outstanding notes of hand, 1811,45,	900 00
1 yoke cattle, (Jonathan,) do	30 00
1 wagon, do	30 00
1 fanning mill, do	12 00
1 yoke cattle, P. Reitzell,	55 00
1 yoke work cattle, P. Reitzell,	65 00
1 plow, do	5 00
1 plow, John Miller,	5 00
1 stove and pipes,	10 00
1 pr mill stones,	70 00
Paid for Ruth's land,	385 45
Book account, P. Reitzell,	700 00
Claim account, do	694 64
	1,394 66

\$6,162 11

John Ruth, Cr. on book,	\$13 00
Paid for Ruth's land,	50 00
Salary in store,	150 00

\$213 00

To book account,	\$104 10
Wilson,	4 50
Hunt,	4 00

\$112 60 \$100 00

26 On the back of which is indorsed: "Filed March 7th, 1859. D. H. Sunderland, Co. Clerk."

Witness testified that paper "D" was before the arbitrators, and an indorsement thereon, signed by witness, Addams, and Brewster, in words and figures following, viz:

"The within statement of the affairs of the firm of Reitzell, Miller & Reitzell was taken by agreement of parties, as the basis of the settlement this

day made by the undersigned, who were chosen as arbitrators by the parties, August 19, 1850 ;" is in hand-writing of witness ; witness is shown a paper marked "E," containing items of account as follows :

	June 6, 1845. John Miller,	Dr.	\$54 00
	"To cash, per O. H. Wright,		10 00"
	May 11, 1847, do cash,		
27	"1844, company stock,	Dr.	\$6,186 53
	Same items as on page 25 of this record,		
	Cr.		

"By saw mill property, and other items, as on page 25 of this record, \$6,-
162 11.

John Miller, Dr. to claim of Sam. C. McClure,	\$1,825 00
Cr. paid Sam. C. McClure, items,	1,812 00
	<u>\$13 00"</u>

28 Witness states that paper "E" and an indorsement thereon signed by witness, Addams and Brewster, in words and figures following: "The within statement of the affairs of the firm of Reitzell, Miller & Reitzell, was taken by agreement of parties as the basis of the settlement this day made by the undersigned, who were chosen as arbitrators by the parties, August 19, 1850," is in hand-writing of witness ; paper "E" is indorsed, "Filed March 7, 1859. D. H. Sunderland, Co. Clerk."

Witness is shown a paper marked "F", containing accounts as follows, viz:

	"Company stock,	Dr."	
	Same items as on page 25 of this record,		\$6,186 53
29	"Company stock,	Cr.	
	By saw mill of Leibshietz" and other items as on		
	page 25 of this record,		\$6,162 11
	County orders, \$77 01,		38 50
	Account, P. Reitzell of Geo. Reitzell,		32 88
	Dr. John Miller (Frankerbeger),		25 00
	Advance on property sales,		300 00
			<u>\$6,558 49</u>

John Ruth Cr. on book,	\$13 00	
Cash pr Ruth's land,	50 00	
Service in store,	150 00	
		\$213 00

To book account,	\$104 10	
Wilson,	4 50	
Hunt,	4 00	
		\$112 60

		\$100 40
30	"Jonathan Reitzell,	Dr.
	To Mattoch's claim,	735 00
	"By cash" and other items,	
	Due in store,	519 10
	Mattoch's claim,	735 00
		<u>1,254 10</u>
		\$2,225 67

Witness testifies that paper "F" was before the arbitrators, and an indorsement thereon signed by witness, Addams and Brewster, in words and figures following: "The within statement of the affairs of the firm of Reitzell, Miller & Reitzell, was taken by the agreement of parties as the basis of the settlement this day made by the undersigned who were chosen as arbitrators by the parties, August 19, 1850" is in hand-writing of witness ; paper "F" on the back is indorsed, "Filed March 7th, 1859. D. H. Sunderland, Co. Clerk."

31 "Witness thinks papers "D" "E" & "F" were used as indicated by indorsements thereon above set forth, and formed basis upon which award was

made"—John Ruth and Jonathan Reitzell were present with the arbitrators; thinks one of the administrators and perhaps both were present—all the parties except Franklin Reitzell were present; not certain as to him.

Paper marked "G," purporting to be "basis of award made by Brewster Clark and Addams in settlement of company accounts of administrators of P. Reitzell deceased, John Miller and Johnathan Reitzell, made August 19, 1850, the basis of such settlement, being a statement made by the late Philip Reitzell March, 1844; and agreed to by the parties above named" shown witness by appellee, containing items of accounts as follows:

"John Miller is credited by capital stock including \$100 40 of John Ruth, March 1, 1844, 3,321 26
Interest from March 1, 1844, to August 19, 1850, 1,286 91

\$4,608 20

	Dr.	
To bonds and interest from Jan. 1, 1845,	\$1,003 13	
Note and interest from Nov. 30, 1842,	585 00	
Account and interest from May 27, 1844,	74 12	
Sundry acc'ts and interest from March 1, 1844,	53 18	
32 Amount paid & int. from Jan. 30, 1849,	30 15	
Plow &c., interest from March 1, 1844,	41 62	
Assumed,	385 45	
Interest on \$326 77 from March 1, 1844,	126 62	2,299 27
		\$2,308 93
Credit by nett profits,		195 49
		\$2,504 42
Jonathan Reitzell, credited by capital stock, sundry items and interest,		5,689 76
Dr. to amt. of mill property, sundry items and int.		6,299 70
		609 94
By nett profits,		182 00
		\$427 94
33 Administrators of Philip Reitzell dec.,	Dr.	
"To amt. agreed March 1, 1844,	1,394 16	
" yoke oxen &c.,	233 08	
	1,627 74	
Int. from March 1, '44	630 75	2,258 49
		182 00
Cr. by nett profits,		2,076 49
		427 94
"Amt. due from Jno. Reitzell to Jno. Miller,		2,076 49

Whole amt. due John Miller, \$2,704 43"

On the back of which paper is indorsed, "filed Febr'y 24, 1859, D. H. Sunderland Co. Clerk." "Filed April 5, 1859, L. W. Guiteau Cl'k."

Witness thinks paper "G" is in hand-writing of John H. Addams; not certain. It was drawn up at time of arbitration; don't remember any thing else being before us, except what was in papers marked "D" "E" "F" & "G." The account marked "A" is in witness' hand-writing. Papers "D" "E" "F" & "G" remained in witness' possession; witness can't say how many copies of the award were made out; no recollection at all in regard to the number of copies of award made out; award, being paper marked "B," is in hand-writing of witness' brother.

On Cross Ex., this witness testified that he had already stated all he knew about copies of the award being made out; that he has no recollection whatever about it; has an impression not amounting to a recollection that we

were sworn; remember but little about it, except what appears upon the papers; (referred to by wit.) my impression is that abitrators were sworn by
 34 Esq. Montelius; quite positive he was there, and my impression is we were sworn; thinks John Ruth was a witness before the arbitrators; that he was clerk in the store of Reitzell & Co., or whatever the name was; no recollection that any one was sworn as witness; perhaps Ruth and Geo. Reitzell were and perhaps not; no recollection about it; whole thing is out of my mind.

Appellee then offered in evidence papers marked "D" "E" "F" & "G."—Appellants objected, and excepted upon court allowing said several papers to be given in evidence.

Thomas J. Turner for appellee testified he had known Henry R. Reitzell since he was a boy; witness was employed by appellee four or five years ago in reference to collecting his claim against the Reitzell estate; about that time appellee and Henry R. Reitzell came to witness' office and talked about the award; might have been five or six years ago; can't tell exactly when; Miller had been there several times before; appellee's counsel asked the witness "if Henry R. Reitzell and plaintiff (appellee) came to your office and talked about the award, what did they say?" to which appellants objected, but the court allowed the question to be asked and appellants excepted.—Plaintiff and Henry R. Reitzell came to witness' office together. Reitzell said they didn't want to have law about it; that they were neighbors and
 35 didn't want witness to commence suit about it. They talked a good deal; Miller remarked to Reitzell that if it was not paid he should sue, as he had waited long enough; said Reitzell had tried to wrong him out of the claim by preventing him from filing his account, but he had filed it; went out without doing anything; got a little cross before they went out; talked about Miller's claim not being filed in time; gone about half an hour and both came back; Miller wanted the papers from me; Reitzell said it ought to be paid; that only one member of the family was opposed to it, and he would go home and pay it any way. They then took the papers and went away; was after the claim was filed in the County Court. Testimony of this witness excepted to by appellants

Jonathan Reitzell for appellee, testified that he was present at the arbitration; both administrators were present; witness presented an account; can't say what administrators and Miller presented; witness examines papers "D" "E" "F" "G" above referred to; thinks these papers were before the arbitrators; was another matter—my individual account before the arbitrators, but not considered by them, at which witness was dissatisfied.

On Cross Ex., witness testified he had no knowledge of the arbitrators being sworn; didn't think it necessary they should be; had so much confidence in the men he didn't care whether they were sworn or not; they were not sworn to witness' knowledge; didn't see them sworn; witness was
 36 there all the time—long before they commenced and during their sitting.

On his direct examination resumed, witness stated that Jno. Ruth and Geo. Reitzell were at the arbitration, not sworn as witnesses, in knowledge of witness.

Appellee introduced as part of the files of said Probate Court in this cause the following notice:

Title of cause in County Court:

"To Henry R. Reitzell and Franklin Reitzell, administrators of the estate of Philip Reitzell deceased—

Gents: You will please take notice that on the first day of the March Term, A. D., 1859, of the Stephenson County Court, I will appear to make proof of my claim against the above named estate, according to law, at which time you are notified to appear.

Freeport, February 16th, 1859.

JOHN MILLER.

By Turner & Bright, Atty's for compl't and claimant."

John Miller's oath, that on the 22d or 23d day of February, A. D., 1859, he served a copy of this notice upon appellants by handing to each of them
 37 a copy in person; sworn and subscribed March 15, 1859, "as being his notice to the administrators under which his claim herein was prosecuted; this paper being marked "J" and filed in the County Court, March 15, 1859, and in the Circuit Court April 5, 1859.

"During the trial it was admitted and agreed by the parties, that Philip Reitzell died about March or April 1850; that letters of administration upon his estate were granted to the appellants by the Probate Court of Stephenson county, May 7, 1850; that the administrators gave notice for presentation of claims against said estate for adjustment at the August Term, A. D., 1850, of said Probate Court, said August Term terminating by adjournment August 7, 1850. Papers marked "A" "B" "C" "D" "E" "F" "G" & "J" were filed in the Probate Court as severally marked, and were all the papers sent from the Probate Court, and produced on the trial of this cause" in Circuit Court.

"The above and foregoing was all the evidence in this cause."

Plaintiff then asked the following instruction to the jury :

"If the jury find that the award of the arbitrators was a settlement and 38 adjustment of accounts against the estate, and if the jury find for the plaintiff, then the plaintiff is entitled to interest from the date of the award," which the court gave as asked and appellants excepted.

This instruction filed January 19, 1860.

The jury find a verdict as follows: "We the jurors find for the plaintiff," (appellee) "and assess the damages \$3,255 65." Thereupon appellants moved the court for a new trial, and also in arrest of judgment, and filed 39 points in writing, specifying the grounds therefor as follows:

Title of Court and cause.

1. The verdict of the jury not warranted by the law.
2. The verdict was contrary to the evidence.
3. Improper evidence was submitted to the jury.
4. Erroneous instruction of the court.

Points in arrest.

1. There was no proper filing of the appellee's claim, either in the court below or in this court.

2. There was no proper filing of the appellee's claim within the time required by the law.

3. The appellee's claim was barred by the statute requiring it to have been filed within two years from the granting of letters.

4. The appellee's claim was barred by the statutes of limitations.

5. The appellants were entitled to judgment in their favor on the record 40 and proofs. This motion filed January 25, 1860.

Appellee remitted \$1,179 17-100 from his damages as found by the jury and the court overruled the motions of appellants for a new trial, and in arrest of judgment, to which appellants excepted.

41 Bill of exceptions filed February 16, 1860; February 29, appeal bond filed by appellants.

Errors assigned on the record.

1. The court below erred in admitting improper evidence to be given by claimant.

2. The court below erred in giving the instruction to the jury as asked by claimant's counsel.

3. That the verdict of the jury was contrary to the evidence.

4. That the verdict of the jury was not warranted by the law.

5. The court below erred in overruling defendants' motion for a new trial.

6. The court below erred in overruling defendants' motion in arrest of judgment.

7. The court below erred in rendering judgment on the verdict.

8. The court below erred in rendering the judgment in manner and form as it was rendered.

9. The court erred in rendering judgment for claimant, when by the laws of the land, such judgment ought to have been for defendants below.

JASON MARSH and
F. W. S. BRAWLEY,
Atty's for Appellants.

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Reitzel et al

vs

Miller

A. Abstract

Filed April 10, 1840

L. Leander
Clerk.

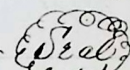
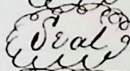
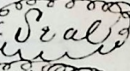
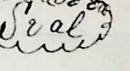
State of Illinois }
 Stephenson County } Pleas before the Hon Benjamin R.
 Sheldon Judge of the 14th Judicial
 Circuit of the State of Illinois at @ Regular Term
 of the Stephenson County Circuit Court begun and
 held in pursuance of Law at the Court House in the
 City of Freeport on the first Monday in the month of September
 in the Year of our Lord One Thousand Eight Hundred
 and Fifty nine —

Present — Hon^{ble} Benj. R. Sheldon — Judge
 W. C. Meacham — States Atty
 Chas. A. Faggart — Sheriff
 L. M. Guileau — Clerk

Be it Remembered that heretofore to wit; on the 5th day of
 April A.D. 1859. one of the days of said September Term of said
 Court, the following Appeal Bond was filed in said Court
 in @ certain cause then and there pending wherein John
 Miller is plaintiff, and Henry R. & Franklin Reitzell
 Administrators &c are Defendants to wit: —

Know all men by these presents that we Franklin Reitzell
 and Henry R. Reitzell Administrators of the Estate of Philip
 Reitzell deceased, and Charles Reitzell and Cyrus J. Reitzell
 are held and firmly bound unto John Miller in
 the penal sum of six thousand and five hundred dol-
 lar lawful money of the United States for the payment of
 which well and truly to be made we bind ourselves our
 heirs and administrators jointly severally and firmly
 by these presents — Witness our hands and seals this
 Twenty second day of March A.D. 1859 — The condition of
 the above obligation is such that whereas the said John
 Miller did on the sixteenth day of March A.D. 1859 before
 Hon William M. Buckley the County Judge of Stephenson
 County recover @ Judgment against the above bounden

Franklin Reitzell and Henry R. Reitzell as administrators as
aforesaid for the sum of three thousand one hundred and
forty three $\frac{7}{10}$ dollars from which judgment the said
Franklin Reitzell and Henry R. Reitzell Administrators as
aforesaid have taken an appeal to the Circuit Court of the
County of Stephenson aforesaid and State of Illinois -
Now if the said Franklin Reitzell and Henry R. Reitzell as
Administrators as aforesaid shall prosecute their Appeal
with effect and shall pay the judgment or decree with
cost which may be awarded by the Court to be paid by
said Administrators in due course of Administration -
upon dismissal or trial of said appeal then the above
obligation to be void, otherwise to remain in full force and
effect -

Franklin Reitzell Administrator 
Henry R. Reitzell Administrator 
Charles Reitzell 
Cyrus J. Reitzell 

Approved by me at my office this 29th day of March
1859 -
J. M. Buckley
County Judge

On the back of which Appeal Bond appear the following in-
dorsements to wit: "Filed March 30th 1859. D. H. Sunderland
Clerk" - (and) "Filed April 5th 1859. A. W. Guiteau Clerk" -

And also on the same day to wit: - the 5th day of April 1859
one of the days of said September Term of said Court the
following Transcript was filed in said Court to wit: -

State of Illinois } In the County Court of said County
Stephenson County } of the March Term A.D. 1859 -
Be it Remembered that heretofore

to wit: on the present day of March A.D. 1859 at the March Term of said Court the following proceedings were had to wit:—

John Miller
vs

Henry R. Reitzell and
Franklin Reitzell Administrators
of the Estate of Philip Reitzell
Deceased

Now on this day comes the Plaintiff by Thomas J. Turner and Hiram Bright his Attorneys, and E. M. Brawley also appears as Counsel for two of the heirs of said Philip Reitzell Deceased and enters his Plea of General issue and Statutes Limitations— and this cause coming on for trial John Ruth Johnathan Reitzell, John W. Addams and John A. Clark were called and sworn as witnesses on the part of said Plaintiff, and the Court after hearing the evidence adduced herein and by agreement of the parties ordered that the further hearing of this cause be continued until Tuesday the fifteenth day of March 1859—

and afterwards to wit:— on the fifteenth day of March 1859— at the March Term of said Court the following proceedings were had to wit:—

John Miller
vs

Henry R. Reitzell and Franklin
Reitzell Administrators of the Estate
of Philip Reitzell Deceased

Now on this ^{day} comes the Plaintiff by his Attorney and files his ^{day} proof of Notice

to said Administrator of the intended presentation of the claim of said Plaintiff against said Estate, and also comes P. W. Braoley as Counsel for two of the heirs of said deceased and enters his appearance for said Administrator for the purpose of taking advantage of any defect in these proceedings and the time having arrived to which this cause was continued the Court proceeded to hear the arguments of the Counsel, and after hearing the same the Court takes time to find the issue and continues this cause until to-morrow 3 O'clock P.M. —

and afterwards to wit:—on the sixteenth day of March at the March Term of said Court A.D. 1859 the following proceedings were had to wit:—

John Miller

vs
Henry R. Reitzell and Franklin Reitzell Administrators of the Estate of Philip Reitzell Deceased

Now on this day come the parties by their Attorneys, and this ^{cause} coming on for final adjudication the Court having taken time to consider the matter and upon the evidence and proofs herein finds for the Plaintiff the sum of Three Thousand One Hundred and forty three $79\frac{1}{100}$ Dollars. It is therefore considered and ordered by the Court that the said John Miller Plaintiff herein have and recover from the said Henry R. Reitzell and Franklin Reitzell Administrators of the Estate of Philip Reitzell deceased defendants herein the said sum of ~~three~~ Three Thousand One Hundred and forty three $79\frac{1}{100}$ Dollars the amount of his claim against said Estate and that he have execution therefor —

Bill of Costs

John Miller

&

Henry R. Ritzell and Franklin
Ritzell Administrators of the Estate
of Philip Ritzell Deceased -

Debt

Plaintiffs Costs

Clerks Fees

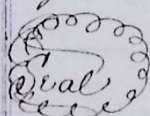
Doc Suit ^{10¢} Issg 3 Subps ^{75¢} Entg Shffs mtn ^{10¢}	"	95
Swg 4 witz ^{20¢} Entg ord contin ^{20¢} Entg ord ^{20¢}	"	60
Entg 2 orders ^{48¢} filg 13 paps ^{65¢} Makg Bill Costs ^{30¢}		1.35
Makg Transcript with Certificate & seal		1.50
		4.40

Sheriffs fees - Serving Summons

Service ^{50¢} mileage ^{40¢} Ret ^{10¢} (By Beede Dep)		1.00
Service ^{50¢} mileage ^{1.50} Ret ^{10¢} (By McDowell Dep)		2.10
Service ^{1.50} mileage ^{80¢} Ret ^{10¢} (By McDowell Dep)		2.40
Total Costs		5.50

State of Illinois
Stephenson County

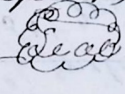
I David H. Sunderland Clerk of
the County Court in and for said County do hereby
certify that the foregoing is a true full and correct
copy and Transcript of the proceedings of said
in the above entitled cause as appears from the Record
of said Court in my office - In witness whereof I have
hereunto set my hand and affixed the seal of the
said County Court at Freeport this Second day of
April 1859



David H. Sunderland
Clerk

On the Back of which appears the following endorsement
Dont: Filed April 5th 1859. St. Guillem Club

Also on the same day to wit: - on the 5th day of April 1859 the following Summons was issued out of said Court to wit: -

State of Illinois }
Stephenson County, } The People of the State of Illinois to
the Sheriff of said County, - Greeting -
We command you to summon John Miller if he be found in your County personally to be and appear before the Circuit Court of said County of Stephenson on the first day of the next term thereof to be holden at the Court House in the City of Freeport in said County on the first Monday in the month of September next to answer unto Henry R. Ritzell & Franklin Ritzell Administrators of Estate of Philip Ritzell deceased - in an Appeal, and have you then and there this writ with an Endorsement thereon in what manner you shall have executed the same - Witness Luther A. Guilean Clerk of our said Circuit Court and the Seal of said Court at Freeport in said County this 5th day of April A.D. 1859 -  Attest A. M. Guilean Clerk

On the back of which appears the following Enclosurement to wit: - "Served the within by reading the same to the within named John Miller this 12 day of May, A.D. 1859 - Chas. F. Fazzant Sheriff by E. R. McDowell
Service 50. Mileage 10. Return 10. - 70. "Copy"

And afterwards to wit: - At the Regular December Term of said Court A.D. 1859, on the 18th day of January A.D. 1860, one of the days of said December Term of said Court the following Entry appears of Record in this cause to wit: -

John Miller

vs

Appeal

Henry R. Reitzell Et al

And on this day come the parties with their Attorneys and upon the issues joined for trial put themselves upon the country. thereupon ^{also} come a jury of twelve good and lawful men to wit: Charles H. Rosensteel and Elmer others who were severally duly elected tried and sworn and after hearing a portion of the evidence the hour of adjournment having arrived the further hearing is postponed until tomorrow morning —

And afterwards to wit: — on the 19th day of January A.D. 1860 one of the days of the said December Term of said Court the following Entry appears of Record in this cause to wit:

81 John Miller

vs

Appeal

Henry R. Reitzell & Franklin Reitzell

Administrators of Estate of Philip Reitzell Deceased

And again come the parties by their Attorneys and also come the jury empaneled in this cause, and after hearing further evidence, the jury retire in charge of an officer to consider of their Verdict, and after a short absence they return into Court with their verdict as follows to wit: That they find the issues for the Plaintiff, and assess the Damages at the sum of Three Thousand two hundred and fifty five Dollars and Sixty five cents. thereupon the Defendants enter their motion for a New Trial —

And afterwards to wit: — on the 25th Day of January A.D. 1860 One of the days of said December Term of said Court

the following entry appears of Record in this cause to wit:

81 John Miller

vs
Henry R. Rutzel Et. als

{ Appeal

And now come Defendants by their Attorney & file their motion for @ New trial & in arrest of judgment —

Stph Civ Court

Henry Rutzel Et al administrators &c

vs
John Miller

{ Appeal from Colourt

And now at this day come the said Defendants & file their motion for @ New Trial & in arrest of judgment for reasons following —

1st The Verdict of the Jury was not warranted by the Law

2 The Verdict was contrary to the Evidence —

3 Improper Evidence was submitted to the Jury —

4 Erroneous instruction of the Court —
Points in arrest

1 There was no proper filing of the Plaintiffs claim either in the Court below or in this Court —

2 There was no proper filing of the Pliffs claim within the time required by the Law —

3 The Plaintiffs claim was barred by the Statute requiring it to have been filed within two years from the granting of Letters —

4 The Plaintiffs claim was barred by the Statute of Limitation —

5 The Defendants are entitled to Judgment in their favor on the Record & proofs — on the back of which appears Brawley & Marsh's the following Acknowledgment to wit: —
 "Filed Jan 25. 1860 L. J. Quintan Clerk" For Defendants

And afterwards to wit: — on the 2nd Day of February A.D. 1860. one of the days of said December Term of said Court the following Entry appears of Record in this cause to wit: —

81 John Miller

vs
 Henry R. Reitzell Et al

Appeal

For comes the Plaintiff and remits Eleven Hundred Seventy Nine & 1/100 Dollars Amount of interest on the award of the arbitrators, of his Damages as by the Jury assessed — and the Defendants motion for a New Trial having come on to be heard and after arguments of Counsel and the Court being advised in the premises the motion is overruled and the said Defendants by Brawley their Attorney except to the ruling of the Court — It is thereupon considered and ordered that said Plaintiff have and recover of said Defendants the sum of Two Thousand and Seventy Six Dollars and Forty Eight cents — (the amount as by the Jury assessed after deducting the amount by the Plaintiff remitted) and that the same be paid in due course of administration. It is further considered and ordered that said Defendants have and recover of said Plaintiff their costs by them about their suit in this behalf expended and that they have Execution for the same. Thereupon the said Defendants pray an appeal. and it is ordered that the same be allowed upon this filing their appeal Bond with the Clerk of this Court properly conditioned to Plaintiff.

liffy in the sum of Three Thousand Dollars with Charles Reitzell, Cyrus J. Reitzell and F. W. S. Brawley as Sureties within Thirty days from the rising of this Term of Court—

And afterwards to wit:—on the 14th day of February A.D. 1860 of said December Term of said Court the following Entry appears of Record in this cause to wit:—

81 John Miller

&

Henry R. Reitzell Etals

Appeal

On motion of Defendants and by consent of parties it is ordered that Two weeks be allowed to settle the Bill of Exceptions—

And afterwards to wit:—On the 16th day of February A.D. 1860. the Defendants come and file their Bill of Exceptions in this cause—to wit:—

From the Circuit Court of Stephenson County in the State of Illinois of the December Term 1859—

Henry R. Reitzell &
Charles Keim Reitzell
Administrators of the
Estate of Philip Reitzell
deceased

John Miller

Appeal from the County Court of said Stephenson County sitting in Probate—

Be It Remembered that the Transcript of the Record of the Probate Court in this cause is in the words and figures following viz:—

State of Illinois In the County Court of said County
Stephenson County of the March Term A.D. 1859 —

Be It Remembered that heretofore to wit: — On the seventh day of March A.D. 1859 at the March Term of said Court the following proceedings were had to wit: —

John Miller

vs

Henry R. Ritzell and
Franklin Ritzell Administrators
of the Estate of Philip Ritzell deceased

Now on this day comes the Plaintiff by Thomas J. Turner and Heirson Bright his Attorneys, and H. M. S. Beacoley also appears as Counsel for Two of the heirs of said Philip Ritzell deceased and enters his Plea of General issue and Statutes Limitations, and this cause coming on for Trial John Ruth Johnathan Ritzell, John W. Addams and John Alcock were called and sworn as witnesses on the part of said Plaintiff, and the Court after hearing the evidence adduced herein and by the agreement of the parties ordered that the further hearing of this cause be continued until Tuesday the fifteenth day of March 1859 —

And afterwards to wit on the fifteenth day of March 1859 at the March Term of said Court the following proceedings were had to wit: —

John Miller

vs

Henry R. Ritzell and Franklin
Ritzell Administrators of the
Estate of Philip Ritzell deceased

Now on this day

comes the Plaintiff by his Attorney and files his proof of Notice to said Administrator of the intended presentation of the claim of said Plaintiff against said Estate and also comes J. W. S. Brawley as counsel for Mrs of the heirs of said Deceased and enters his appearance for said Administrator for the purpose of taking advantage of any defect in these proceedings and the time having arrived to which this cause was continued the Court proceeded to hear the arguments of the Counsel, and after hearing the same the Court takes time to find the issue and continues this cause until tomorrow 3. O. clock P.M.

And afterwards to wit: - on the sixteenth day of March at the March Term of said Court A.D. 1859 the following proceedings were had to wit: -

John Miller

vs

Henry R. Reitzel and Franklin Reitzel Administrators of the Estate of Philip Reitzel Deceased -

Now on this Day come the parties by their Attornies and this coming on for final adjudication the Court having taken time to consider the matter and upon the Evidence and proofs herein finds for the Plaintiff the sum of Three Thousand One Hundred and Forty three ⁷⁴00 Dollars It is therefore considered and Ordered by the Court that the said John Miller Plaintiff ^{herein} have and recover from the said Henry R. Reitzel and Franklin Reitzel Administrators of the Estate of Philip Reitzel deceased Defendants herein the said sum of Three Thousand One Hundred and forty three ⁷⁴00 Dollars the amount of his claim against said Estate and that he have execution therefor -

Bill of Costs

John Miller
vs

Debt

Henry R. Reitzel and Franklin
Reitzel Administrators of the
Estate of Philip Reitzel Deceased

Clerks Fees

Plaintiffs Costs

Doc suit ^{10¢}	Issue & Subpoa ^{85¢}	Enty Shffs Return ^{10¢}	"	95
Swearing 4 mch ^{20¢}	Enty ord contin ^{20¢}	Enty order ^{20¢}	"	60
Enty order ^{40¢}	file 13 papers ^{65¢}	Make Bill Costs ^{30¢}		1.35
Make Transcript with certificate & Seal				1.50

Shffs fees - Serving Summons

Service ^{50¢}	Mileage ^{40¢}	Retn ^{10¢}	(By Reide Dep)	\$	1.00
Service ^{50¢}	Mileage ^{1.50¢}	Retn ^{10¢}	(By McDowell Dep)		2.10
Service ^{1.50¢}	Mileage ^{80¢}	Retn ^{10¢}	(By McDowell Dep)		2.40
Total cost					\$ 9.90

State of Illinois

Stephenson County

I David W. Sunderland Clerk of
the County Court in and for said
County do hereby certify that the foregoing is a true full
and correct copy and Transcript of the proceedings of
said in the above entitled cause as appears from
the Records of said Court in my office.

In Witness Whereof I have hereunto set my
hand and affixed the seal of the said County Court
at Freeport this Second day of April 1859.

Ex at

David W. Sunderland
Clerk

On the back of which Transcript appears the following
Endorsement to wit: "Filed April 5th 1859. J. M. Guitman Clerk

And on the Trial of this cause the Plaintiff as being his
claim against the Estate of Philip Reitzel deceased,

presented an account marked Exhibit "A" which was in words & figures following viz:-

"Estate of Philip Reitzell deceased, to John Miller Or
To this amount due for bal on Jc & interest \$5000.00
Freeport May 7th 1852"

Upon the Back of which account appeared the following indorsement viz:-

"Estate of Philip Reitzell to John Miller — \$5000.00"
Filed May 7th 1852. Wm Preston CLK"

And the submission to arbitrators, & award marked ^{Exhibit} B & C. hereinafter copied filed on the back thereof as hereinafter set forth.

~~State of Illinois
Stephenson County~~

~~To all to whom these presents shall come We John H. Ad-
dams, John H. Brewster and John A. Clark send Greeting—
Whereas there are several accounts depending, and divers
controversies and disputes have arisen between Henry
Reitzell and Franklin Reitzell of the County of Stephenson
and State of Illinois Administrators of the Estate of Philip
Reitzell deceased late of said Stephenson County of the first
part and John Miller of said County of the second part
and Johnathan Reitzell of the same County of the third
part, and whereas for the putting an end to the said con-
troversies and disputes they the said Henry Reitzell and
Franklin Reitzell Administrators &c as aforesaid of the
first part John Miller of the second part and Johnathan
Reitzell of the third part by their agreement of submission
duly executed and bearing date August 16th A.D. 1850 have
agreed and promised and also by their several Bonds or
Obligations bearing date August 16th A.D. 1850 have recip-
rocally become bound each to the other in the penal sum of
five Thousand Dollars to stand to abide perform and keep
the award order and final determination of us the said
John H. Addams, John H. Brewster and John A. Clark~~

~~In Witness Whereof the said parties have hereunto
set our hands and seals this Septeenth day of August
A.D. 1850
Executed in Presence of { H. R. Reitzel Seal
Franklin Reitzel Seal
John Ruth Administrators of the Estate of
Philip Reitzel Decd
pro Reitzel Seal
John Miller Seal~~

~~On the Back of which appears the following indorsement
to wit: Filed March 15th 1859. O. H. Underland
Clerk~~

And that the Defendants without waiving any benefit
right or advantage to them accruing in account of
any discontinuance or irregularity on the part of the
Plaintiff at any time in the prosecution of his said
claim pleaded 1st the General issue, and 2nd the several
Statutes of Limitations. 1st that this Plff had not filed or
Exhibited his said claim against said Estate in the
Probate Court of Stephenson County in the State of Illinois
within two years from the granting of letters of Adminis-
tration in said Estate to said Defendants by said Pro-
bate Court—2nd That this cause was not commenced with-
in five years from November 5th 1859. & 3rd That this claim was
not prosecuted within seven years from the death of
said Philip Reitzel, and so was barred—

The Plaintiff then called John Ables who was sworn
as a witness, and Plaintiffs Counsel Exhibited him an
Instrument of Writing marked Exhibit "B" purporting to be an
award made by arbitrators and being in the words
and figures following viz:—

State of Illinois
County of Stephenson, }
To all to whom these presents shall

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come we John J. Addams, John K. Brewster and John H. Clark send Greeting—

Whereas there are several accounts depending and divers controversies and disputes have arisen between Henry Ritzell and Franklin Ritzell of the County of Stephenson and State of Illinois Administrators of the Estate of Philip Ritzell deceased late of said Stephenson County of the first part and John Miller of said County of the second part and Johnathan Ritzell of the same County of the third part, and whereas for the putting an end to the said controversies and disputes they the said Henry Ritzell and ~~Franklin~~ ^{Franklin} Ritzell Administrators &c as aforesaid of the first part, John Miller of the second part and Johnathan Ritzell of the third part by their agreement of submission duly executed and bearing date August 16th A.D. 1850 have agreed and promised and also by their several Bonds or Obligations bearing date August 16th A.D. 1850 have reciprocally become bound each to the other in the penal sum of five Thousand Dollars to stand to and abide perform and keep the award order and final determination of us the said John H. Addams, John K. Brewster and John H. Clark, so as the said award be made in writing under our hands and seals and ready to be delivered to the parties in difference on or before the twenty fifth day of August instant, ^{as} by the said agreement of submission and Bond well fully appear. Now know Ye that we the said Arbitrators whose names are hereunto subscribed taking upon ourselves the burthen of the said award and having first fully Examined and duly considered the proofs and allegations of all the said parties who were duly notified of the time & place at which the said award would be made Do make and publish this our award between the said parties in the manner following:—First We do award and order that John Miller party of the second part

as aforesaid is entitled to receive from Johnathan Reitzel the sum of four hundred and twenty seven ⁹⁴/₁₀₀ dollars (\$427.94) and we do award and order that said Johnathan Reitzel pay said sum of \$427.94 to said John Miller:— Second. we do award and order that said John Miller party of the second part as aforesaid is entitled to receive from the Estate of Philip Reitzel deceased the sum of two thousand and seventy six ⁴⁸/₁₀₀ Dollars (\$2076.48) and we do award and order that Henry Reitzel and Franklin Reitzel Administrators as aforesaid pay to said John Miller the said sum of \$2076.48:— Third: We do award and order that the unsettled ^{Notes &} accounts belonging to the late firm composed of Philip Reitzel, Johnathan Reitzel and John Miller— a schedule of which unsettled & unpaid notes & accounts is hereto annexed marked Schedule "A"— shall be equally divided between the parties of the first second & third parts— I.E. that Henry Reitzel and Franklin Reitzel Administrators as aforesaid have one third part of said unpaid Notes & accounts and that John Miller have one third part of said Notes & accounts and that Johnathan Reitzel have one third part of said unpaid Notes & accounts—

The said award so made as aforesaid by us the said Arbitrators has sole reference to partnership accounts and demands existing between the members of the late firm composed of said John Miller, Johnathan Reitzel and Philip Reitzel deceased trading as partners in said County of Stephenson. and our said award as aforesaid has no reference to demands or accounts existing between said parties or their Representatives otherwise than as Partners as Partners as aforesaid or otherwise than as springing from said partnership transactions—

Lastly we do award that upon the per-

performance severally by the said parties of the first second and third parts of the orders & award hereby made ^{that} the said parties shall respectively execute to each other General releases of all claims & demands touching or concerning the premises aforesaid or relating to the same. In Testimony whereof we have hereunto set our hands & affixed our seals at Newport this 22nd day of August A.D. 1850 —

In presence of
 John W. Addams *Seal*
 John K. Brewster *Seal*
 John A. Clark *Seal*
 Chas. A. Clark

List of unsettled Notes and accounts belonging to the Estate of Philip Ritzell deceased. Johnathan Ritzell and John Miller jointly growing out of Partnership proceedings To wit: —

Schedule A ⁿ Anno Bro't up		230.49
Notes	Jared Pennington	2.19
Bailey & Brayton	10.00 Daniel Riddle	19.36
Wm Cummings	2.02 Bailey & Brayton	8.41
Edward Kitchell	" 75 Ruse Cerper	2.60
H ^m Barber	21.39 Reuben Ruth	1.88
S. W. Harrison	7.62 John Small	6.78
J. Jobe	6.06 Luther Hall	3.85
Joseph Meare	15.64 Benjamin Cummings	6.30
Asa Wood	11.91 Thos Giller	5.69
Cadwell & Shetman	19.65 Joseph Norris	4.81
Carters Ward	3.12 Wm Chilton	" 44
Henry Starr	2.12 John Strayer	4.77
Robert Young	63.78 Purley Strayer	3.81
	5.164.11 J. J. Jewell	21.57
Accounts	Thos M. Shaw	3.50
Desire Waterway	" 58 Chester Bushnell	12.60
Wm McShue	26.82 Wm Clark	" 95
Geo Ritzell	36.98 Hideo & Agis	1.09
Doct. Ferrel	2.00 Julius Smith	23.52
	230.49	364.74

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(Amot Brot down)	364.74
W. Waller	" 55
O. DePue	84.90
Wm Snyder	" 62
Geo W Ghe	" 25
John Glover	4.78
Eddie Young	2.27
John Slocum	44.44
Asah Smith	1.66
Sam Rader	4.58
Jeremiah Bloodshed	1.25
John Ritzell	278.69
	\$ 788.28

On the Back of which award appears the following endorsement to wit: "Filed March 7th 1859 D. H. Suedlund and
Robert K.

Witness testified that his brother Charles A. Clark whose name is affixed to said Instrument of writing as a subscribing Witness is dead, that said Instrument is in the hand writing of said Charles A. Clark and was signed by John A. Clark (Witness), John K. Brewster and John H. Adams.

John Rutz was sworn as a Witness and Plaintiff Counsel exhibited to him an Instrument of Writing marked Exhibit C purporting to be a Submission to Arbitrators, and the same being in the words and figures following viz:—

Whereas divers disputes and controversies have arisen and are now depending and unsettled between Henry Ritzell and Franklin Ritzell of the County of Stephenson and State of Illinois Administrators

of the Estate of Philip Reitzel late of said County deceased of the one part, and John Miller of the same County of the second part, and Johnathan Reitzel of the same County of the third part - Now therefore for the purpose of settling and determining such disputes and controversies it is hereby mutually agreed and understood by and between the said parties that the same shall be referred and submitted to the arbitration and determination of John H. Addams, John K. Brewster and John A. Clark all of said County and State or any two of them, and the said arbitrators or any two of them as aforesaid shall make and publish their award in writing under their hands and seals and deliver the same to the parties or to either of them who shall desire the same on or before the twenty fifth day of August instanc. and it is hereby further agreed and understood by and between the said parties that the said arbitrators or any two of them as aforesaid shall take and receive @ statement of the joint affairs or joint stock in Trade of said Philip Reitzel in his lifetime and said John Miller and said Johnathan Reitzel which was made in writing by said Philip Reitzel in the Year Eighteen Hundred and forty four (1844) (to be produced and shown by said parties) as a basis upon which to commence and make and publish their said award in writing as aforesaid and it is also hereby further agreed and understood by and between the said parties that this submission may be made a rule of the Circuit Court within and for the County of Stephenson. aforesaid -

In Witness Whereof the said parties have hereunto set our hands and seals this Sixteenth Day of August AD 1860.

Executed in Presence
of John Rutz

H. R. Ritzell
Franklin Ritzell
Administrators of the Estate
of Philip Ritzell Decd
Jon^d Ritzell
John Miller

Seal
Seal
Seal
Seal
Seal

On the Back of which Submission appears the following endorsement to wit: Filed March 15th 1859
D. H. Sunderland Clerk

Witness testified that he signed this writing as a subscribing witness - (was so long since that he cannot remember whether the writing was signed by the persons purporting to execute it or not. to the best of his recollection it was and in his presence -

J. W. S. Brawley called by Plaintiff testified that the writing marked Exhibit "C" was in his hand writing that he knew nothing about its execution, that it was not executed in his presence -

The Plaintiff then offered in evidence to the Jury the said writings referred to by witness John A. Clark, J. W. S. Brawley and John Rutz, & Marked Exhibits "B" & "C" to which the Defendants Counsel objected for the following reasons viz:

- 1 The Administrators under the Laws of Illinois had not the legal capacity ^{or authority} to bind the Estate by an arbitration.
- 2 The pretended award is not evidence to prove the account presented in this case -
- 3 No publication or delivery of the pretended award shown -

- 4 The account was Barred by the Statute of Limitations—
- 5 The pretended award is not final and certain—
- 6 Pretended award defective in not showing that arbitrators were sworn with no where appearing that the arbitrators were sworn—
- 7 Pretended award does not pursue the pretended submission—
- 8 Plaintiff has suffered @ discontinuance in the prosecution of his claim against the Estate—
- 9 And for other reasons urged—

But the Court allowed said writings marked Exhibit "B" to be given in Evidence to the jury, to which the Defendants Excepted—

Plff then recalled the witness John A. Clark and Exhibited to him a paper marked "D" of which the following is a copy viz:—

Book accounts		Book of	
Wm M Ghee	26.82	A. B. Ames	" 12 1/2
James M Ghee	85.02	Thos M Ghee	3.50
David Meidig	3.19	James Brown	2.22
Jes Reitzell	36.98	Chester Bushner	12.60
Mary bad accts <u>\$50.00</u>		Wm Clark	" 93
Doct Trill	2.00	Wm Harris	1.42
Jared Pennington	2.19	John Goddard	4.81
Daniel Riegle	19.36	Midew Davis	1.00
Bailey & Brayton	8.71	Miss Wilcox	2.98
John B. Johnson	37.33	John B. Gillingman	4.98

P. Wright	3.95	Aaron R. Richards	3.66
Russ Cooper	2.60	Julius Smith	23.52
John Loomis	4.10	Henry Waller	" 53
Reuben Ruth	1.84	O. Deane	84.90
John Small	6.78	Wm Snyder	" 62
Luther Wall	3.85	Wm Johnson	18.43
Ben Cummings	6.30	J. A. Verbeck	1.94
Wm Goddard	" 81	Lorain Rima	3.27
Sam Fisher	6.07	Levi Lucas	2.12
Dr. H. Hoays	1.12	John McHenry	5.06
James Murdagh	41.51	Geo McHue	" 25
Thos Gillett	5.69	John Closer	14.38
Peter Fisher	1.28	Edward Young	3.23 2.27
Dan S. Hawley	1.36	John Slocum	44.44
Jesse Jones	6.62	Melting Mitchell	38.19
Dikens	" 50	Alfred Goddard Senr	" 56
Ja ^d Norris	4.81	Jackson Rickard	1.05
James Pijison	2.55	Charles Norick	16.00
Andrew Milcoran	16.81	Wm Mitchell	5.00
James Milcoran	18.06	Amos Parriott	4
Wm Chilton	" 44	Henry Ault	" 56
G. W. Klingman	" 25	B. G. Williams R. G.	14.52
John Strayer	4.77	A. Chamberlain Esq	10.04
Isaac Relecter	22.36	Robert Barbour	4.12
Geo Hurster	2.93	Noah Smith	1.66
Geo Fern	8.66	Sam Rober	4.53
Prepler Strayer	3.81	Sarah Reitzell	23.30
John J. Jewell	21.51	Jeremiah Blodshed	1.25
	427.87	John Reitzell	278.69
		Desiah Heathway	58
			557.00

Notes		Am't Bro't up	
Wm More	15.98	J. B. McElhenney	475.19c
R. Seaman	48.86	Jas McCool	2.15
Robert McGhee	17.60	Wm Ginn	38.75
Bailey & Bayton	10.00	Bert C. C.	18.45
Robert Jones	20.32	Wm Wilson R.G.	4.05
Wm Cummings	2.02	Jas Mussel	9.19
Chas Cummings	1.00	Curtis Wagon	3.81
Edmond Keitcher	" 75	Henry Star	3.12c
Wm Barbaud	21.39	Robert Ginn	2.12c
J. Canfield	23.26	Wm Robey	63.78
John E. Ez	10.37	John Wilson	59.83
Geo Fisher	16.39	Michael Snyder	80.00
Heirani Glingman	29.45	Ware & Folgate	23.17
Jas Titus	3.87	Barber Esquire	7.69
Kirkpatrick	17.76	Engelhart Porter	21.29
Jas Barnes	6.99		15.00
E. B. Gillett	3.62c		\$827.58c
Wm Wilson Peatonica	22.04		
L. W. Harrison	7.62		
Carpenter Miller	17.79		
Jacob Street	26.32		
Elias Bowes	10.00		
J. Job	6.06		
Wm M. Smith	14.63		
Wm Baum	17.27		
Jas Mears	15.69		
Sam Mains	7.66		
Henry Lerbe	6.94		
Ara Wood	11.91		
Harvey Osburn	29.84		
Cadman	19.65		
Wm Johnson	10.00		
Abner Glingman	2.25		
	475.19c		

Company Stock to the following

John Miller Amount

Johnathan Ritzell Do

John Ruth Do

Musina Mitchell Feby 1/41. 123.44. Int 21.84

Stevenson & Co March 26/42. 307.90. Int 36.84

Georg's Burster " 80.00 Int 11.20 - pd 27.00

Jacob Ruber - about " - - - -

Joseph Miers "

C. G. Epley

3220.86

2220.17

100.40

145.28

344.74

64.20

10.00

10.00

70.88

\$6186.53

By Said Mill Property

3200.00

Book Account with standing

Notes of hand

1811.45

900.00

1 Yoke Cattle (Johnathan)

30.00

1 Wagon Do

30.00

1 Fanning Mill Do

12.00

1 Yoke Cattle P. Ritzell

55.00

1 " Woke " Do

65.00

1 " Plough " Do

5.00

1 " Do Jno Miller

5.00

1 Shoe & pipe

10.00

1 pr Mill Stones

70.00

Paid for Ruths Land 326.77 Feby 1/41

58.68

385.45

Book account P. Ritzell 700.00

694.64

1394.66

Claim a/c Do

\$6162.11

John Ruths C^r on Book

13.00

pd for Ruths Land

50.00

Salery in Store

150.00

Tobacco account

104.14

Milern

4.50

Account

4.00

112.60

\$100.00

~~The within statement of the affairs of the firm of Reitzell
Miller & Reitzell was taken by agreement of parties as the
basis of the settlement this day made by the under-
signed who were chosen as arbitrators by the parties
August 19, 1850~~

~~John H. Addams
John K. Brewster
John A. Clark~~

On the Back of which the following endorsement ap-
pears to wit: "Filed March 7th 1859"

A. H. Sunderland and Collier

Witness testified that the paper marked "D" was before
the arbitrators an endorsement thereon purporting
to be signed by witness John H. Addams & John K. Brew-
ster said endorsement being in the words of figures follow-
ing viz:—

The within statement of the affairs of the firm
of Reitzell Miller & Reitzell was taken by agreement of par-
ties as the basis of the settlement this day made by the
undersigned ~~and~~ who were chosen as arbitrators by the parties.
August 19, 1850.

John H. Addams
John K. Brewster
John A. Clark

is in hand writing of the witness. The witness is also
shown a paper marked "E" of which the following is a
copy viz:—

June 6, 1845. John Miller
To cash for A. H. Wright
May 11, 1847 Do Do cash

24
\$54.00
10.00

1844 Company Stock	Dr	
John Crillius Amount		3220.86
Johnathan Reitzell Dr		2220.17
John Ruth		100.40
Melina Mitchell 123.40. Int 21.84		145.28
Sturges Hos - March 26/42 - 307.90 - Int 36.84		344.74
Geo Hurst 850 - Int 11.20 paid 27.00		64.20
Jacob Raker		10.00
Joseph Mease		10.00
C. G. Epley		70.88
		<u>\$6186.53</u>

By Saw Mill Property	Cr	3200.00
Book of outstanding		
Notes Do 1811.45		900.00
1 Yoke Cattle (Johnathan)		30.00
1 Wagon Do		30.00
1 Churning Mill Do		12.00
1 Yoke Cattle (P. R.)		55.00
1 Mare Do		65.00
1 Plough Do		5.00
1 Do Jno Miller,		5.00
1 Stove pipe		10.00
1 pr Mill Stones 326.74		70.00
Pd pr Ruths Land 38.68. Int 8 pr Ruths		385.45
Book of P. Reitzell - 700.00		
claim of 694.66		1394.66
		<u>\$6162.11</u>
John Miller Dr to claim of Saml. McClure		\$1825.00
lv - Paid Saml. McClure		\$150.00
Ezra B. Gillett		500.00
House \$100 & carriage 80		180.00
Suit with Geo Reitzell		982.00
		<u>\$1812.00</u>
		\$13.00

Nitross states that this paper marked "C" was before the arbitrators and an endorsement thereon signed by Nitross John H. Addams and John R. Brewster in the words and figures following viz: "The within statement of the affairs of the Firm of Ritzsch Miller & Ritzsch was taken by agreement of parties as the basis of the settlement this day made by the undersigned who were chosen as arbitrators by the parties —

John H. Addams
John R. Brewster
John A. Clark

August 19. 1850 —

Is in handwriting of Nitross —
On the Back of which Instrument appears the following endorsement to wit: "Filed March 7. 1859

D. H. Sunderland Clerk

Plff also shows the Nitross @ paper marked "H" of which the following is @ copy viz: —

Company Stock			Dr
To amount Due to Jno Miller			3220.86
" Do Johnathan Ritzsch			2220.17
" Do John Ritzsch			100.40
" Do July 1/44 Rufinus Mitten	123.44 } 21.84 }		145.28
" Do March 26/42 Strenzen Leo	307.90 } 36.84 }		344.74
" Do Geo Ernst Int	80.00 } 11.20 }	91.20	64.20
" Do Jacob Rabel (about)			10.00
" Do Joseph Mier			10.00
			6115.65
" Do Co. Epley			70.88
			6186.53

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Company Stock	Cr	
By Saw Mill Property of Liebschutz	3200.00	
Book account outstanding		
Notes of Hound	1811.45	900.00
1 Yoke Cattle (John Mathers)		30.00
1 Do Do (Philip)		53.00
1 Mare Do		65.00
1 Plough Do		5.00
1 Do (Miller)		5.00
1 Churning Mill (Johntr)		12.00
1 Pr Mill Stones		40.00
1 Sore pipe		10.00
1 Wagon (Johntr)		30.00
Paid for Ruths Land	July 1941 326.77	385.45
	58.68	
Book account P. Ritzel	8700.00	1394.66
	694.66	
On claim of Gillett		6162.11
County Orders	\$77.00	38.50
Account P. Ritzel of Geo Ritzel		32.88
Dr - Mrs Miller (Frankenbeyer)		25.00
Advance on Property Sales		300.00
		\$6558.49

John Ruth. lev on Book	13.00	
Cash for Ruths Land	50.00	
Service in Store	150.00	
		213.00
To Book account	104.10 1/2	
Milron	4.50	
Kent	4.00	
		112.60
		100.40

To Shingle at mill Epley
 Cash Recd of Ery Shingman

Johnathan Ritzell
To Mattocks claim

By cash sent with Geo Ritzell 1840 March
Bills paid at city Expenses &c ^{459.00} 44.93
Money taken out in June 1840
Recd of Geo Smith 1841 - for store use
Do of Hillburth & May - ^{48.84} 68.00 3134.47
His service in store 1 1/2 year at 15 m
+ Boarding from Ruth at \$50. is 230

Due in Store

Mattocks claim

Interest for 1 1/2 year

Dr	Cr
735.00	
	\$918.00
	503.93
	996.00
	500.00
	216.84
	<u>345.00</u>
	349.77
579.10	
<u>735.00</u>	
	<u>1254.10</u>
	\$ 2225.67

Witness testifies that paper marked "F" was before the arbitrators & an endorsement thereon signed by Witness John H. Addams & John H. Brewster in the words and figures following viz: -

The within statement of the affairs of the Firm of Ritzell Miller & Ritzell was taken by the agreement of parties as the Basis of the settlement this day made by the undersigned who were chosen as arbitrators by the Parties -

August 19. 1850 -

John H. Addams
John H. Brewster
John A. Elcott

Is in handwriting of Witness -

On the Back of which paper marked "F" appears the following endorsement to wit: - "Filed March 7th 1859" -

D. H. Sunderland Clerk

Witness thinks papers "D." "E." & "F" were used as indicated

by the endorsements thereon, ^{& above} set forth and formed the basis from which the award was made John Ruth & Johnathan Reitzell were present with the arbitrators and thinks one of the Administrators and perhaps both were present all the parties were present. Except Franklin Reitzell not certain as to him —

Paper marked "G" of which the following is a copy viz: —

John Miller

vs

Henry R. Reitzell & Franklin Reitzell Administrators of the Estate of Philip Reitzell Deceased

(Copy)

Any County Court of
Stephenson County of
March Term A.D. 1859 —

Basis of award made by John K. Brewster, John A. Clark & John W. Addams in settlement of company accounts of Administrators of P. Reitzell dec'd John Miller & Johnathan Reitzell made August 19, 1850. the basis of such settlement being a statement made by the late Philip Reitzell March 1844 and agreed to by the parties above named —

John Miller is credited by capital stock including

100.40 of John Ruth March 1, 1844

Int from March 1, 1844 to Aug 19, 1850

Or

To Bonds assumed of G. Smith

Int from June 1, 1845 to Aug 19, 1850

Note Jno Reitzell assumed

Int from Nov 30, 1842 to Aug 19, 1850

O. W. Wright account

Int from May 27, 1844 to March 1, 1850

Sundry accounts (Clingsman cash & Shingles)

Int from March 1, 1844 to Aug 19, 1850

			3321.26
			1286.91
			4608.27
	750.00		
	253.13	1003.13	
	400.00		
	155.00	555.00	
	54.00		
	20.12	74.12	
	38.75		
	14.43	53.18	

Am't paid Estate of R. Seadam	27.60		
Int from Jan'y 30. 1849 to Aug 19. 1850	<u>2.55</u>	30.15	
Plough & Frankenburg account	30.00		
Int from March 1. 1844 to Aug 19. 1850	<u>11.62</u>	41.62	
Am't assumed of Ruthie	385.45		
Int on \$326.77 from March 1. 1844. to Aug 19. 50	<u>126.62</u>	512.07	2299.27
			\$2318.93
Erby Nett's profits			<u>195.49</u>
Am't due John Miller			\$2504.42

Johnathan Reitzell is credited by Capital			
Stock March 1. 1844	2220.17		
Int from March 1. 1844 to Aug 19. 1850	<u>860.31</u>	3080.48	
Stevenson & Co Mitchell & others	644.22		
Int from March 1. 1844 to Aug 19. 1850	<u>249.63</u>	893.85	
E. Smith Bond	750.00		
Int from Jan'y 1. 1845 to Aug 19. 1850	<u>253.13</u>	1003.13	
John Miller's Note	400.00		
Int from Nov 30. 1842. to Aug 19. 1850	<u>185.00</u>	585.00	
Sundry acct (Clugman cash & Shingles)	38.75		
Int from May 27. 1844 to Aug 19. 1850	<u>14.43</u>	53.18	
On Wright account	54.00		
Int from May 27. 1844 to Aug 19. 1850	<u>20.12</u>	74.12	5689.76
294			
To amt of mill property sold	3500.00		
Int from May 27. 1844 to Aug 19. 1850	<u>1303.75</u>	4803.75	
Whole amt of Notes & acct collected	1073.86		
Int on the above	<u>216.00</u>	1289.86	
Open & panning mill &c	112.50		
Int from March 1844 to Aug 19. 1850	<u>43.59</u>	156.09	
Rent of Saw Mill from March 1. 1844			
to May 27. 1844		50.00	6299.70
			609.94
By Nett's profits			<u>182.00</u>
Am't due from Jno Reitzell			\$427.94

* On the back of which appears the following endorsement to wit: -
"Filed Oct 24, 1857. At W. Sunderland Clerk of Court."
"Filed April 6, 1859 - J. W. Guittan Clerk"

Administrators of Philip Reitzell Decd

To Amt agreed March 1. 1844

" York Open Ware &c

Amt from March 1. 1844 to Aug 19. 1850

Or by new profits

Amt due from Administrators

Amt due from Jno Reitzell To Jno Miller

Amt due from Administrators of P.

Reitzell Decd To John Miller

Whole amt due Jno Miller

Dr

1394.16

233.08

1627.74

630.75

2258.49

182.00

2076.49

427.94

2076.49

\$ 2704.43

*
Shown to witness. Witness thinks the paper marked "G" is in the handwriting of John H. Adams not certain. The paper marked "G" was drawn up at the ^{time} ~~request~~ of the arbitrators don't remember any thing else being before us Except what was in the papers marked "D." "E." "F." & "G". The account in this case marked Exhibit "H" is in the handwriting of this witness - All the papers marked "D." "E." "F." & "G" remained in my possession. Witness can't say how many copies of the award were made out. Has no recollection at all in regard to the number of copies of the award made out. The award being the paper marked "B" is in the handwriting of my Brother -

On cross examination this witness (John A. Clark) testified that on his direct Examination above he had stated all he knew about copies of the award being made out. that he has no recollection whatever about it - Meeting of the Arbitrators was held in Cedarville. I have an impression not amounting to a recollection that we were sworn. remembered but little about it. except what appears upon these papers referred to by me - my impression is that the arbitrators were sworn by Esy Montitues. I am

Aug 34

quite
positive he was there and my impression is we were
sworn. thinks John Ruth was @ witness before the
Arbitrator touching some of the accounts, would not
state it positively - that Ruth was Clerk in the Store
of Rutzell & Co or whatever the name was ^{witness had} no recollection
that any one was sworn as witnesses perhaps John
Ruth George ~~Ruth~~ Rutzell were and perhaps not.
has no recollection about it. the whole thing is out
of my mind -

Plff then offered in Evidence to the jury
the papers referred to by the witness John A. Clark being
the papers above referred to & marked "D", "E", "F" & "G" to which
the Defendants objected but the Court allowed said
papers to be given in Evidence to the jury to
which the Defendants by their counsel Excepted -

Thomas J. Turner was then sworn as @ witness for the
Plaintiff and testified that he had known Henry R.
Rutzell since he was @ boy. witness was employed
by Plff 4 or 5 years ago in reference to collecting his
claim against the Rutzell Estate and about that
time Plff & Henry R. Rutzell came to his (witness) office
and talked about the award. it might have been
5 or 6 years ago. cant tell exactly when. Miller had
been there several times before. Plffs counsel ask this
witness the following question viz: "If Henry R. Rutzell
and Plaintiff came to your office and talked about
the award what did they say?" to which question
Defendants counsel objected. but the Court allowed
the question to be asked of the witness to which the De-
fendants by his counsel Excepted. witness stated that
Plaintiff and Henry R. Rutzell came to his office together
and Rutzell said they didn't want to have any law
about it. that they were neighbors, and didn't want
witness to commence suit about it. they talked a good

deal Miller remarked to Reitzel that if it was not paid he should sue, as he had waited long enough, said Reitzel had tried to exclude him out of the claim by preventing him from filing his account but he had filed it. They went out without doing anything - got @ little cross before they went out, they talked about Miller's claim not being filed in time, they were gone out about half an hour, and both came back Miller wanted the papers from me, Reitzel said it ought to be paid that only one member of the family was opposed to it, and he would go home and pay it any way. They then took the papers and went away this was after the claim was filed in the County Court, this testimony of this witness was objected to by Defendants Counsel but the Court overruled Defendants objections and allowed the testimony to go to the jury to which the Defendants by their Counsel excepted -

Johnathan Reitzel @ witness for the Pff testified that he was present at the ~~Exhibition~~ arbitration both Administrators were present. I presented my account, cant say what the Administrators and Miller presented - witness examined the papers referred to by the witness John A. Clark above referred to & marked "D" "E" "F" "G" - thinks these papers were before the arbitrators, there was another matter ^{my} ~~his~~ individual account laid before the arbitrators but it was not considered by them at which witness was dissatisfied -

On his cross examination this witness testified that he had no knowledge of the arbitrators being sworn, witness didn't think it necessary they should be sworn - had so much confidence in the men that he didn't care whether they were sworn or not - They were not sworn to my knowledge, witness didn't see them sworn - I was there all the time long before

they commenced and during their sitting -

On his direct examination being resumed this witness testified that John Ruth & George Reitzel were at the arbitration, they were not sworn as witnesses to my knowledge -

The Plaintiff also produced as part of the files of said Probate Court in this cause the following Notice

State of Illinois In the County Court of Stephenson
Stephenson County County of the March Term A.D. 1859

John Miller

vs

Estate of Philip Reitzel Deceased

To Henry R. Reitzel &
Franklin Reitzel Administrators of the Estate of
Philip Reitzel Deceased

Sir - You will please take Notice that on the first
day of the March Term A.D. 1859 of the Stephenson
County Court I will appear to make proof of my claim
against the above named Estate according to law
at which time you are notified to appear
Freeport February 16th 1859

John Miller By
Turner & Bright

Atty for Compl't & Claimant

State of Illinois In the County Court of Stephenson
Stephenson County John Miller of lawful age and
of the County of Stephenson being first
duly sworn according to law doth depose and say
that on the 22nd or 23rd day of February A.D. 1859 he served
a copy of the within notice upon Henry R. Reitzel and
Franklin Reitzel Administrators of the Estate of Philip
Reitzel Deceased by handing to each of them a copy

in person and further this Depoent says that not.
 sworn to & subscribed before John Miller
 one this 15th day of March A.D. 1859
David H. Sunderland
Clerk

Is being his notice to the Administrator under which
 his claim herein was prosecuted this paper being marked "J".
 On the back of which notice appear the following endorse-
 ments of filing to wit: "Filed March 15th 1859"
"D. H. Sunderland Clerk"
"Filed April 5th 1859 - J. M. Guilan Clerk"

During the progress of the trial it was admitted and
 agreed by the parties that Philip Reitzell had died
 some time about the month of March or April 1858.
 and that letters of Administration upon his Estate
 were granted to the Defendants by the Probate Court
 of Stephenson County on the seventh day of May A.D. 1858
 and that the Administrator gave the notice for the pre-
 sentation of claims against said Estate for adjust-
 ment at the August Term A.D. 1858 of said Probate
 Court said August Term terminating by adjournment
 on the 7th day of August A.D. 1858. The papers marked
 "A" "B" "C" "D" "E" "F" "G" & "H" were filed in the Probate Court
 as they are severally marked and were all the papers
 that were sent ^{for} before the Probate Court and produced
 in the trial of this cause in this Court.

The above foregoing was all the evidence
 in this case —

Plffs counsel then asked the Court to give
 to the jury the following instruction viz: —
 "If the Jury find that the award of the Arbitrators
 was a settlement and adjustment of accounts

Given

against the Estate and if the Jury find for the Plaintiff then the Plaintiff is entitled to interest from the date of the award"

On the Back of which Instruction appears the following endorsement to wit: "Filed Jan 19. 1860"

"H. H. Guitman clk"

Which Instruction the Court gave to the Jury as asked by Plff's counsel, and to the giving of which instruction to the jury the Defendants excepted-

And the Jury having found a Verdict for the Plaintiff of which verdict the following is a copy viz: "We the Jury find for the Plaintiff, and assess the Damages \$3255.65"

A. M. Rice

Arcton Mallory

Charles H. Rosensteel

Wm K. Hurst

R. O. Hater

George Wolf

W. B. Best

H. DeArmit

David DeGraff

E. D. Leane

George Kohe

Leois Joiner

On the Back of which Verdict appears the following endorsement to wit: "Filed Jan 19. 1860"

"H. H. Guitman clk"

By this Counsel

Thereupon the Defendants moved the Court for a new trial and in arrest of Judgment in this cause and filed his points in writing specifying the grounds of such motion in the records and figures following viz:—

Steph Co Court
 Henry Ritzell Et al
 Administrators &
 ad
 John Miller

Appeal from Co Court

And now at this day come
 the said Defendants file their motion for a new
 trial & in arrest of Judgment for reasons following -

- 1 The Verdict of the Jury was not warranted by the Law -
- 2 The Verdict was contrary to the Evidence -
- 3 Improper Evidence was submitted to the Jury -
- 4 Erroneous Instruction of the Court -

Points in arrest

- 1 There was no proper filing of the Plaintiffs claim
 either in the Court below or in this Court -
- 2 There was no proper filing of the Pliffs claim within the
 time required by the Law -
- 3 The Plaintiffs claim was barred by the Statute of
 requiring it to have been filed within two years
 from the granting of letters -
- 4 The Plaintiff claim was barred by the Statute of Lim-
 itation -
- 5 The Defendants are entitled to Judgment in their
 favor on the Record of proofs -

Brawley & Marsh
 for Defendants

* 81 John Miller
On motion of Defendants and
Henry R. Ritzell et al by consent of parties it is or-
dered that two weeks be allowed to settle the
Bill of Exceptions -
Page 40

On the back of which motion &c appears the follow-
ing endorsement to wit: "Filed Jan 25. 1860"
"J. M. Guiteau clk"

And the Plaintiff herein came and remitted Eleven
hundred and seventy nine \$100 dollars from his
damages as found by the Jury in this cause. the Court
overruled said motions of the Defendants for a new
trial and the motion in arrest of Judgment to which
the Defendants by their Counsel excepted and prayed
that this their Bill of Exceptions might be signed sealed
and made a part of the Record herein. and it was done
so accordingly Benj. R. Sheldon Seal

On the back of which Bill of Exceptions appears the
following endorsement to wit: "Filed February 11. 1860"
"J. M. Guiteau clerk"

And afterwards to wit: on the 4th day of Feby 1860 the following Entry appears of Record in
this cause to wit: *

And afterwards to wit: - on the 29th day of February
A.D. 1860 the following Appeal Bond was filed in
said Court to wit: -

Know all men by these presents That We
Henry R. Ritzell and Franklin Ritzell Administrators
of the Estate of Philip Ritzell deceased as principal
and Charles Ritzell, Cyrus J. Ritzell and F. M. S.
Brawley as sureties are held and firmly bound
unto John Miller in the penal sum of Three Thousand
said Dollars lawful money of the United States
for the payment of which well and truly to be made
we bind ourselves our heirs Executors and Admin-
istrators jointly severally and jointly by these pre-
sents - Witness our hands and seals this fourth
day of February A.D. 1860 -

The condition of the above obligation is such that whereas the said John Miller did on the second day of February A.D. 1860 in the Circuit Court of Stephenson County in the State of Illinois recover a judgment against the above bounden Henry R. Reitzell and Franklin Reitzell Administrators of the Estate of Philip Reitzell Deceased for the sum of Two Thousand and Seventy Six Dollars and forty eight cents to be paid in due course of Administration from which judgment the said Henry R. Reitzell and Franklin Reitzell Administrators as aforesaid have ^{and obtained} prayed for an appeal to the Supreme Court of the State of Illinois And if the said Henry R. Reitzell and Franklin Reitzell Administrators as aforesaid shall pay the amount of the judgment costs interest and damages ^{in the} ^{case} ^{the} said judgment shall be affirmed and also shall duly prosecute said appeal then the above obligation to be void otherwise to remain in full force and effect—

H. R. Reitzell Seal
 Franklin Reitzell Seal
 Chas Reitzell Seal
 Cyrus J. Reitzell Seal
 F. W. C. Brawley Seal

On the Back of which Appeal Bond appears the following endorsement to wit: "Filed Feb'y 29. 1860"—
 "L. M. Guileau Ck"
 By Tho North Secy

State of Illinois
Stephenson County

I Luther W. Guiteau Clerk of
The Circuit Court within and
for said County of Stephenson and State of Illinois
do hereby certify that the foregoing is a true and
complete copy of the Record of the Judgement and of
all the proceedings had in a certain ^{in said Court} cause wherein
John Miller is plaintiff and Henry R. Reitzell
and Franklin Reitzell Administrators of the estate
of Philip Reitzell deceased are Defendants as
the same appears of the Records and files of
said Court in my office to wit:— Appeal Bond
from County Court— Transcript from County Court—
Summons— Account "A"— Award "B"— Submission "C"—
Company Statement Papers— ^{"D", "E", "F"} Basis of Award "G"—
Notice of John Miller ^{Plaintiff} "I"— Instructions— Verdict of Jury—
Points in motion for new trial, Appeal Bond— Bill
of Exceptions— In Witness Whereof I have hereunto
set my hand and affixed the
seal of said Court at my office
in Freeport in said County this 7th
day of March A.D. 1860—
Attest— Luther W. Guiteau Clerk
by Thos North Deputy



In the Supreme Court
of the State of New York
Third Grand Division
of the April Term A.D. 1860

Nearly R. Ritzler and Franklin Ritzler ad- ministrators of the estate of Philip Ritzler deceased 3 John Miller Appellants	}	Appeal from St. Lawrence
---	---	-----------------------------

Afterwards took on the
17th day of April A.D. 1860 at this same
term of the Court before the Justices
thereof came the said Henry R. Ritzler
and Franklin Ritzler administrators
of the estate of the estate of Philip
Ritzler deceased by John Miller
St. Lawrence their attorneys and
say that in the record and
proceedings aforesaid and
also in the rendition of the
judgment aforesaid there is
manifest error in the trial;

1 The Court below erred in admitting im-
proper evidence to be given to the

Jury by Clermont

- 2 The Court below erred in giving to the jury the instruction as asked by Clermonts Counsel
- 3 That the verdict of the jury was contrary to the evidence in the case
- 4 That the verdict of the jury was not warranted by the law.
- 5 The Court below erred in overruling defendants Motion for a new trial
- 6 The Court below erred in overruling defendants Motion in error of judgment
- 7 The Court below erred in rendering judgment on the verdict
- 8 The Court below erred in rendering the judgment aforesaid in manner and form as it was done -
- 9 The Court below erred in rendering judgment for the claimant

Jury by Clermont

- 2 The Court below erred in giving to the jury the instruction as asked by Clermonts Counsel
- 3 That the verdict of the jury was contrary to the evidence in the case
- 4 That the verdict of the jury was not warranted by the law.
- 5 The Court below erred in overruling defendants Motion for a new trial
- 6 The Court below erred in overruling defendants Motion in error of judgment
- 7 The Court below erred in rendering judgment on the verdict
- 8 The Court below erred in rendering the judgment aforesaid in manner and form as it was done -
- 9 The Court below erred in rendering judgment for the claimant

where by the loss of the land
such judgment ought to have
been rendered for the Defendants.

1011 The Court ~~before~~ ~~being~~ ~~in~~ ~~giving~~ ~~an~~ ~~advisory~~ ~~instruction~~
to the jury—

And the said applicants
pray that the judgment awarded
for the errors awarded in the
record and proceedings afore-
said may be reversed annulled
and altogether held for nothing
and that they may be restored
to all things which they have
lost by reason of the said judg-
ment.

Peron ~~severely~~
Approved by ~~at~~
for Applicants

No 147
Supreme Court
Rutgers vs
John Miller
London Error

Filed April 24, 1860
L. Leland
Clerk

147
John Miller

To
H. R. Reitzell, Et. al

Record

Filed April 10. 1860
L. Leland
Clerk