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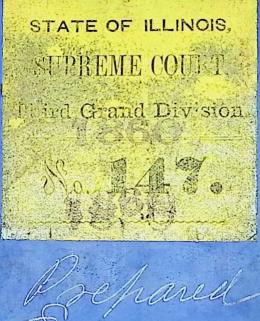
## Supreme Court of Illinois

Eitzell et al

VS.

Miller

71641



Rochard Etgell Miller

15 ellasis=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,

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.

Appellants,

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.

0 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.

2 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.

Appellants without waiving any benefit, right or advantage to them, accruing on account of any discontinuance or irregularity on part of appelled 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.

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.]

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 fig-

ures following:

"Whereas, divers disputes and controversies have arisen and are now depending and unsettled between Heury Reitzell and Franklin Reitzell, of the 20 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 an I 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 awarl 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 wit

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.

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

resence.

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

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

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"

Book accounts against divers persons,

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,	557 00	1	
24	Notes against divers persons,	827 58	Section Alarm	
25	"Company stock to the following		Dr.	
	John Miller, amount,		\$3,220	86
	Jonathan Reitzell, amount,		2,220	
	John Ruth, do		100	
	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	7 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		
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

"Filed March 7th, 1859. D. H. Sun-On the back of which is indorsed: derland, 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 pa-

per marked "E," containing items of account as follows:

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

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

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

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."

viz:

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

Dr." "Company stock, \$6,186 53 Same items as on page 25 of this record, Cr. "Company stock, By saw mill of Leibshietz" and other items as on \$6,162 11 page 25 of this record, 38 50 County orders, \$77 01, 82 88 Account, P. Reitzell of Geo. Reitzell, 25 00 Dr. John Miller (Frankerbeger), 300 00 Advance on property sales, \$6,558 49 \$13 00 John Ruth Cr. on book, 50 00 Cash pr Ruth's land, 150 00 Service in store, \$213 00 \$104 10 To book account, 4 50 Wilson, 4 00 Hunt. \$112 60 \$100 40 Cr." Dr. 30 "Jonathan Reitzell, 785 00 To Mattoch's claim, \$3,479 77 "By cash" and other items, 519 10 Due in store, 735 00 Mattoch's claim, 1,254 10

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."

\$2,225 67

"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, 3,321 26 1,286 91

		D	\$4,6	308 20	
32	To bonds and interest from Jan. 1, 1845, Note and interest from Nov. 30, 1842, Account and interest from May 27, 1844, Sundry acc'ts and interest from March 1, 1844, Amount paid & int. from Jan. 30, 1849, Plow &c., interest from March 1, 1844, Assumed, Interest on \$326 77 from March 1, 1844,	Dr. 1,003 13 585 00 74 12 53 18 30 15 41 62 385 45 126 62		99 27	
	Credit by nett profits,			08 93 95 49	
	Jonathan Reitzell, credited by capital stock, sund and interest, Dr. to amt. of mill property, sundry items and in		5,6	04 42 89 76 99 70	
	By nett profits,			09 94 82 00	
33	Administrators of Philip Reitzell dec., "To amt. agreed March 1, 1844, " yoke oxen &c.,	1,394 233	16	27 94 D	r.
	Int. from March 1, '44	1,627 630		2,258	49
	Cr. by nett profits,			182	00
	"Amt. due from Jno. Reitzell to Jno. Miller, Amt. due from administrators of P. Reitzell dec.,	to John M	Iiller,	2,076 427 2,076	94
	Whole and Jun Take Miller				

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 whatver 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

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

to be given in evidence.

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.

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 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.

The verdict was contrary to the evidence.
 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.

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.

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

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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. Tilen April 10.1860

## IN THE SUPREME COURT OF ILLINOIS,

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VS.

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Record of proceedings in County Court hereinafter set forth in bill of exceptions.

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"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 par-

First, we do award and order that John ties in the manner following: 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.

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 fig-

ures following:

"Whereas, divers disputes and controversies have arisen and are now depending and unsettled between Henry Reitzell and Franklin Reitzell, of the 20 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 an I 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 awar! 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. 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,	D#71 01		
	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	
	John Ruth, do		100	
	Massena Mitchell, February 1, '41, 1234	4. int. 2184.	145	28
	Stevenson & Co., March 26, '42, 307 90,	int. 36 84.	344	74
	George Furster, 80 00, int. 11 20, pd \$2	7 00.	64	20
	Jacob Raber, about		10	00
	Joseph Miere,		10	00
	C. G. Epley,			88
	* * *			

Cr.		\$6,186 53
"By saw mill property,	\$3,200	00
Book accounts, outstanding notes of hand, 1811,45,	900	
1 yoke cattle, (Jonathan,)	30	00
1 wagon, do	30	00
1 fanning mill, do	12	00
1 yoke cattle, P. Reitzell, 1 yoke work 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		- Marian in

	\$6,162 17
John Ruth, Cr. on book,	\$13 00
Paid for Ruth's land,	50 00
Salary in store,	150 00
	\$213 00

		\$213	01
To book account,	\$104	10	
Wilson,	4	50	
Hunt,	4	00	
		-	

Claim account,

694 64

\$112 60 \$100 00 "Filed March 7th, 1859. D. H. Sun-On the back of which is indorsed: derland, 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

1,394 66

\$100 40 Cr."

\$3,479 77

1,254 10

Dr.

735 00

519 10

735 00

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, \$54 00 "To cash, per O. H. Wright, 10 00" do cash, May 11, 1847, Dr. "1844, company stock, 27 \$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 1,812 00 Cr. paid Sam. C. McClure, items,

\$13 00" 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: Dr." "Company stock, \$6,186 53 Same items as on page 25 of this record, Cr. "Company stock, By saw mill of Leibshietz" and other items as on \$6,162 11 page 25 of this record, 38 50 County orders, \$77 01, 32 88 Account, P. Reitzell of Geo. Reitzell, 25 00 Dr. John Miller (Frankerbeger), 300 00 Advance on property sales, \$6,558 49 \$13 00 John Ruth Cr. on book, 50 00 Cash pr Ruth's land, 150 00 Service in store, \$213 00 \$104 10 To book account, 4 50 Wilson, 4 00 Hunt, \$112 60

"Jonathan Reitzell,

To Mattoch's claim,

Due in store,

Mattoch's claim,

"By cash" and other items,

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

1,286 91

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,

		D	\$4,60	8 20	
32	Note and interest from Nov. 30, 1842, Account and interest from May 27, 1844, Sundry ace'ts and interest from March 1, 1844, Amount paid & int. from Jan. 30, 1849, Plow &c., interest from March 1, 1844, Assumed,	Dr. 003 18 585 00 74 19 53 18 30 18 41 69 385 48 126 69	2 3 5 2 5 5	9 27	
	Credit by nett profits,		\$2,30	8 93 5 49	
	Jonathan Reitzell, credited by capital stock, sundr and interest, Dr. to amt. of mill property, sundry items and int		\$2,506 5,686 6,299	9 76	
	By nett profits,			9 94 2 00	
33	Administrators of Philip Reitzell dec., "To amt. agreed March 1, 1844, " yoke oxen &c.,	1,394 238		7 94 Di	r.
	Int. from March 1, '44	1,627 630		2,258	49
	Cr. by nett profits,			182	00
	"Amt. due from Jno. Reitzell to Jno. Miller, Amt. due from administrators of P. Reitzell dec., to	John		2,076 $427$ $2,076$	94

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

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" "K" & "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 whatver 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.

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" "F" "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

"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 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 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.

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.

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. 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

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.

Reizell it al Mille Abstract Filed April 10.1840 L'Lelend Clerk, Tate of Minus 3

Page 1-

State of Illinois 30 Pleas before the Vain Benjamin R. Sheldow Judge of the 14th Judicial bircuit of the State of Allinois at a Regular Firm of the Strehenson Country bircuit bourt begun and held in pursuance of Saw, at the bourt bouse in the bity of Freepost on the first Monday in the month of September in the Grav of our Sord One Thousand Eight Hundred and Fifty pine —

Versent—Word Penj R. Sheldon— Judge Atter

Present-lood Penj R. Sheldon-Judge'
W. D. Meacham - States Alty
Chat A. Jaggart - Sheriff
S. M. Guileau - Clerk

Be it Remembered that heretofore to mit; on the 5th day of April AD. 1859, one of the days of said September Form of said bourt, the following Appeal Bond was filed in said bourt in a certain cause then and there pending wherein form Philler is plaintiff, and benry R. Faranklin Reitzell Administrators to are Defendant point:

Konowrall men by these presents that wowiranklin Reitsell and Voenry R. Reitsell Administrator of the Estate of Philip Reitsell deceased, and Charles Reitsell and Cyrus freit-fell are held and firmly bound unto John Miller in the penal Rum of six thousand and five hundred dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselass our hiers and administrator jointly severally and penals this liventy second day of Murch a.o. 1809 The condition of the above obligation is such that whereas the said form Miller did on the sixteenth day of Murch AD. 1809 before How William Mr. Buckley the bounty fudge of Stephenson County, receiver a fudgment against the above bounden

Page 2 Franklin Reitzell and Benry R. Reitzell as administration as aforesaid for the sum of three thousand one hundred and Losty three 49/100 dollars from which fudgment the said Franklin Reigell and Henry R. Reitzell Administration as aforesaid have taken an appeal to the bircuit bourt of the County of Strphenson aforesaid and State of Illinois, -Now if the said Franklin Keitzell and Henry Reitzell as Administrators, as oforesaid shall prosecute their Appeal with Effect and shall pay the Judgments or decree with cish which may be awarded by the bourt 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 Krankein Reitzell Administrator (Seal) Henry R. Reitzell Administrator (Seal) Charles Reitzell (Sval) Cyrus J. Reitzell (Sval) Approved by me at my office this 29th day of March 1859 - County Judge County Judge On the back of which Affeat Bond appear the following in-desements tomp: "Tiled March 30th 1859. D. M. Sunderland bobler 10" and Filed Afril 5th 1859. d. M. Juilean belk" And also on the same day tomit: the 5th day of April 1859 one of the days of said September Ferm of said Court the following Franscript was filed in Raid Court tomt: State of Illinois In the County Court of said County Stephenson County? of the March Germ a.D. 1859 - Be it Remembered that heretyfore

Serm of said Court the following proceedings were had Page 3 John Miller Herry R. Reitzell and
Franklin Kitzell Administrators
of the Estate of Philip Reitzell Deceased -Sow on this day comes the Plaintiff by Thomas J. Turner and Kiram Bright his Atterneys, and F. M.S. Brawley also appears as Counsel for the of the heirs of said Philip Keitzell Deceased and Enters his blea of General issue and Statules Similar Tohnwithan Reitzell. John 16. Addams and John A. Clark were called and soom as witnesses on the hart of said Blaintiff, and the Court after hearing the Evidence adduced herein and by agreement of the partiess ordered that the Juriher hearing of this cause be continued until luesday the fifteenth day of march 1859 and afterwards tonit: on the lifteenth day of march 1869-at the march Term of paid bourt the Jollaving foro-ceedings were had timb: John Miller Hermy R. Reitzell and Franklin Riitzell Administration of the Estate of Philip Reitzell Deceased Raintiff by his Attorney and files his peoof of notice

Page 4

To said Administrator of the intended presentation of the claim of said Plaintiff against said Estate, and also comes of the Brawley as Counsel for two of the Reirs, of said deceased and Entere 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 bourt proceeded to hear the arguments of the Counsel, and after hearing the same the Court tukes time to find the issue and continues this cause until to-morrow 3 O clock P.M.

And afterwards Torrit: - on the Sixteenth day of March at the March Term of Said Court a.D. 1859 the Jollowing proceedings were had prish:

John Miller
Heing R. Reitzell and Franklin
Reitzelt Administrator of the Estate of Milip Reitzell Deceased

Thoso on this day come the parties by their Attorneys, and this coming on Jor final adjudication the Court having taken time to consider the matter and upon the Evidence and proofs herein finds for the Plaintiff the Rum of Three Thousand One Houndred and Jorty three "I'm Dollars It is therefore considered and or dered by the Court that the said form miller Plaintiff herein have and recover from the said them the Estate of Philip Reitsell deceased defendants herein the said sum of the Three Thousand One Houndred and feet three Three Thousand One Houndred and feet three I'm Dollars the amount of his claim against said bestate and that he have execution therefor

Bill of Costs John Miller Page 5 Heitzell Administrator of the Estate 2 of Philip Reitzell Deceased -Plainliffs Cosh Doc Suit " Jarg 3 Subpas 75 Enty Shifts note " 95 Ent 2 orders " file 13 pape 65x make Bill Costs 304 " 60 1.35 make Transcript with Certificate or Real 1.50 Sheriffs heed - Scrving Summans
Stroice 50% mileage 40% Ret 10% (by Beede Dep)
Service 50% mileage 1.50 Ref 10% (By Mixowell Dep)
Service 150% mileage 80% Ret 10% (By Mixowell Dap)
Troice Mileage 80% Ret 10% (By Mixowell Dap) 1.00 2.11 2.48 5.511 Total Costs \$9.90 State of Minois To Stephenson County? I David Wo. Tunderland Clerk of the County Court in and for said County do hereby certify that the possessing is a true full and correct copy and Transcript of the proceedings of said in the above entitled cause of appears from the kecord of said bourt in my office - In witness whereof I have hereunto set my hand and affixed the real of the said beauty bourt at sure port this second day of April 1859 David Ho. Sunduland On the Back of which appears the following Endersument

vero prial

Also on the same day tomit: on the oto day of April 1859 the following Summons was issued out of said State of Illinois To The People of the State of Illinois To the Sheriff of raid County - Greeting-Court tonik :-We command you to Summon John Miller if he be found in your bounts personally to be and appear before the leivewith bourt of Said bounts of Sephenson 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. Reitzel of ranklin Reitzel Adminis tratos of Estate of Philip Reitsell deceased in an Appeal, and have you then and there this writ with an Endonement thereon in what manner you shall have Extended the same Mitness Suther A. Sinte an Clark of our said liverit bourt and the Seal of said bourt at Frechest in said County this 5th day of April A.D. seidean Club

On the back of which appears the following Enclorement Whit: "Served the within by reading the same to the within name of form Miller this 12 day of May 120 1859 - Chalo. Jagant Sheriff by E. R. McDowell' Strings 50. Mileago 10. Leturn 10. — To. "Expedy"

And afterwards to mit: - At the Regular December Term of said bourt A. D. 1869, on the 18th day of famuary A.D. 1860, one of the days of said December Term of said bout the following Entry appears of Record in this cause Domit:

Dage > 81 John Millar Them R. Reilzell Etials & Ano on this day come the par

ties with their Attorneys and upon the issued joined for trial put themselves upon The Country. Thereupon come a fury of mitre good and lawful men tonit; Charles No. Kirensteel and Eleven and ofthe hearing to portion of the Evidence the hour of adjournment having arrived the further heaving is hosthered until to-morrow morning

And afterwards to mit: -on the 19th day of fune ary A.D. 1860 one of the days of the said December From of said Court The following Entry appears of Record in this cause truit.

81 John Miller

Henry R. Reilziel & Franklin Reilzell Deccased And again come the parties by their detorneys and also come the jung Empanneled in this cause, and after Kraining further Evidence, the jury police in charge of an officer to consider of their Verdick, and after a short assence they reluin into leaut with their verdich as follows tonit: That they find the issues for the Plaintiff and apel the Danages at the sum of the Shousand how Hundred and lifty five collars and Digly, five cents. thereupon the Defendants Enter their motion for a Aud Trial -

And afterwards to nit: on the 25th Day of January +201860 One of the days of said December Firm of said benet

The following Entry appears of Record in this cause Tomit: Caji 8 Som Miller Suppleal Stras Stras cornes Defendants by their Letting & file their molin por a New trial of in arust of Judgment -Stoph lein leurt Henry Rutzell Et al administrators re John Miller And now at this day come the said Defendants of the thir motion for @ new Grial of in arrest of Judgment for reasons Jollaring -111 ph The Verdich of the Juny was not warranted by the Law? 2 The Vadict was contrary to the Evidence 3 Amproper Evidence was submitted to the Jury -4 Errenews instruction of the Court -Points in arest There was no proper Piling of the Plaintiffs claim rither in the Court below or in this Court -2 There was no proper thing of the Pyps claim within the line required by the Said of The Plaintiffs, claim was barred by the Statute requiring it to have been file a within this grand, from the granding 4 The Plaintiffer claim was boured by the Statute of Similations -

The requiants are intitled to Judgment in their Page 9 Javer on the Record oproofs The following Evelorement Tonis for Deputants "pled fan 25.1860 S.M. Sintean elle" and afterwards to mit: - on the 2md Day of Sebruary and 1860, one of the days of said December From of said bourt the following Entry appears of Record in this cause tomit: -81 John Miller ZAppeal Werny R. Reitzett Et als Z Joso cir. for comes the Raintiff and lemis Eleven Hundred Seventy Sine + "how Dolland, Camount of interest on the award of the arbitrators; of his Damages as by the Jury assessed - and the De-Jewants motion for a New bride having come on tobe heard and after arguments of Coursel and the Court being advised in the premises the motion is consuled alid the said Dependants by Trawley their Attorney Exapt to the ruling of the bour b- It is thereigher considered and ordered that paid Plaintiff have and received of said Defendante the sum of Im Thousand and Seventy Sig Dollarg and forty Eight cents the amount asky the jury assessed after deduction the amount by the Planity remitted) and that the same be paid in due course of administration. It is purther considered and ordered that said Dependants 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 bede loved upon their pling their appeal Bord with The Colork of this Court properly conditioned to blain

Cafe 10 liff in the sum of The Thousand Dollars with Charles Reitzell. Cyrus J. Reitzell and F. W.S. Brawley as Surelies within Thirty days from the resing of this Firm of bourt 1860 of said December Firm of said Court The following Entry appears of Record in this cause tomit: Sofon Miller She She allowed to settle the Dill of Exceptions -And aftereo ands torich: - On the 16th day of Frabenay, ALO, 1860. The Defendants come and file their Bill of Exceptions in this cause -tomb; in the Circuit Cent of Sephenson County in the State of Ellinis of the De centre Dern 1859 -Henry W. Reitzel & Grackein Keitzell Adimmistrators of the Secretared Thilip Reitzell John the County Court of seid Stration County siting from Miller Tim Brobate -Br It Remembered that the Sens in the mords and pigners bollowing viz:

State of Ideinois In the County Court of said bounts State benson County of the March From A.D. 1859 -Page 11 Be It Remembered that heretofore Tornt: - On the seventhe day of March A.D. 1859 at the March Ferm of said bourt the following proceedings were had tornt: -John miller Theony R. Reitzell and Franklin Reitzell Administrators of the Estate of Philip Reitzell Deceased Now, on this day comes the Reasity by Thomas & James and Wiram Bright his Altowers, and F. M.S. Bewoley also appears as Counsel for Two of the heirs of said Philip Keitzell Deceased and Eulers his Rea of General issue and Statutes Simi-Tations, and this cause coming on for Trial John Ruth John ath an Keitzell, John Ho Add dams and John Ablack were called and secon as nituessey in the part of said Plaintiff and the bourt ofter hearing the Evidence ad duced herein and by the agreement of the parties ordered that the further hearing of this cause be continued until Tuesday the fiftuenth day of March 1859 And afterwards to sint on the fifteenthe day of Murch 1859 at the March Sum of said bourt the following proceeding were had turns; John Miller Hogy R. Reitzell and Franklin Z Reitzell Administrators of the Estate of Philip Reitzell deceased & November day

comes the Plaintiff by his Attorney and files his proof of Vage 12 Molice to said Administrators of the intended presentatim of the claim of said Plaintiff against said Estate and also comes & . W.S. Brawley as counsel for Firs of the heirs of said Deceased and Entero his appearance presid deministrators for the purpose of latting advantage of any defect in these proceedings and the time having arrived Dwhich this cause was continued the bourt proceeded to hear the arguments, of the bounsel, and often hearing the same the bourt takes time to find the issue and continues this cause until To-mirrow J. O. clock I'm. at the March Term of said bourt a. 1859 the following proceedings were had timb; John Miller Heitzee Administration of the Estate of Philip Reitzere 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 Evilence and proofs herein finds for the Plainty the sum of Three Thursand One Houndred and Fronty there 191 mm Dollars It is therefore auxidered and Orgened by the bount that the said from Mides Plaintiff have and recover from The said Herry R. Reitzell and Franklin Keitzel Administrators of the Estate of Philip Reitzell deceased Depurbants herin The said Rum' of Three Thousand One hundred and forty three " 9100 Dollars the amount of his claim against paid Estate and That he have top entire Therefor -

John Miller Page 13 Henry R. Reitzell and Franklin Kingell Administrators of the Cotate of Philip Reitzell Deceased Elisabelle Costs

Clerks Sills

Dod Ruit 10 & Spring 3 Subpar 10 Ents Shifts Return 1004

Swearing 4 mb 10 Ents ord center 2004 Ents order 2004

Ents 2 orders 40 4 file 13 papers, 65 4 make Bill Costs 3004

Make Franscript with certificate a Sval 1 95 11 60 1.35 1.50 0 1.00 2.10 2.40 \$ 9 90 State of Alineis & I Daviel 16. Sunderland Clerk of The County Count in and for said County Do hereby certify that the foregoing is a true feel and correct copy and Franscript of the proceedings of said in the above Entitled cause as appears from the Records of said bourt in my office In Milues Whereof I have hereunto set my hand and offiged the real of the said bounty bourt and ruport this Decend day of April 1859 -David Hodunderland On the back of which Franscript appears the following Endonement tonit: "Filed April 5th 1859. Str. Guileair Sect And on the Trice of this cause the Plaintiff as being his claim against the Estato of Philip Reitzeet deceased,

er the orange we has often presented an account marked Exhibit to which was Page 14 in words spigures following viz:

Estate of Philip Reizzel Deceased, To John Miller Del

To this amount due for bal on ye sinterest \$5000.00 Streeport May you 1852" When the Back of which account oppeared the follogoing indersement viz: Estate of thilip Keitzell to John Miller 8 51119.110" Siled May y to 1852. Mm Preston Cll "-And the submission to arbitrators, raward marked 131 6. herein after copied filed on the back thereof as herein after Sephensen County 3 To all to whom these purats shall come the John to Id dams, John So Brewster and John Alblack send Guting Whereas there are several accounts defending, and divers cintroversies and dispelles have arisen between Henry Keitzell and Franklin Keitzell of the County of Stephenson and State of Seleccio Administrators of the Estate of Philips Keitzell deceased late of said Styphens up County of the first part and John Miller of said Compter of the recent part and Johnathan Reitzere of the Rapie County of the third parts and whereas for the pretting an End to the said con troversies and disputes they the said Henry Kentgell and derauklin Keitzett Adminfetvator to as aforesaid of the hist part John Miller of the second har and John athens Reity ell of the third part by their agreement of submission duly Executed april beauting date August 16 th A. D. 1850 have agreed and promised and also by their several Bones or digations Hearing date August 16 N. D. 1850 have recipedcally begine bound Each to the other in the head som five Spousand Collars, To stand to rabide perform and hope The few and order and final determination of usthe such John Howldams, John Ho. Breuster and John Ablack

In Mitness Whereof Ho the said parties have hereunto for the Seal and reals this Siplewith day of August of the Roll of Seal of Show Ruth Willer State of Philips Reitzell Soul of Philips Reitzell Soul of Soul from Miles State of Soul from Miles Soul of Philips Reitzell Soul of Soul from Miles Soul Days 15 On the Back of which oppears the pelving will remember the bill Bill March 15 17859. D. 46 Situation Confeluto And that the Defendants without vaiving any benefit right or advantage to them account of any discontinuance or irregularity on the part of the Plaintiff at any time in the presecution of his said claim pleaded 1st The General issue, and 2nd the Seonal Statutes of Similations. 1st this Plf had not pied on Exhibited his said claim against said Estate in the Probate Court of Staphenson County in the State of Selinis within the years from the Granding of letters of Adminis-tration in paid Estate to said Defendants by said Bro-bate bourt - In That this cause was not commenced with in fire years from November 5th 1859. A 3th That this claim was not prise cited within Deven your from the death of Raid Shilip Keitzell, and 20 was barred The Plaintiff then called John Ablack who was soom as a nituese and Plaintiff Coursel Exhibited Whim an Instrument of Wiling marked Exhibit "I" purposting to be un woord made by arbitrators and being in the words and pigures polloroung viz: State of Selinois Boll to whom these presents shall bounty of Stephenson; To all to whom these presents smay

wines one orange of his seconde alles was hin come we Lohn of Addams, John Ko. Breuster and John H. Jay 16 Clark send Greating - Whereas there are several accounts depending and divers contriousies and disputes have arisen beliview Henry Reitzall and Franklin Reitzall of the country of Stephenson and State of Belinis Admin istrators of the Estate of Philip Reitzell deceased late of said Naphenson County of the pist part and John Miller of said County of the seeind Part and Johnsthan Reitzell of the same County of the third part, and whereus for the they the said Herry Reitzell and fixed Rilgell, Idministrators for as aforesaid of the first part, from miller of the se and part and Johnathan Keitzell of the third part by their agreement of submission duly Executed und bearing date August 16. th A.D. 1850 have agend and promised and also by their sever at Bonds or obligations bearing date duguet 16 th de 1860 have reciprocally become bound each to the other in the penal sum of five Thomand Dollars to stand to and abide perform and Keep the award order and final determination of us the said John H. Addams, John 16. Breuster and John Ablasto. so asthe said award be made in couting under our hands and Reals and ready to be delivered to the parties in difference on or before the menty sixto day of Luguest instant by the said of eveneut of submission and Bour will hilly appear. Now Kanno Tel That we the said Arbitrator where names are hereun often pubscribe & Taking upon ourselves the burther of the said award and having pist pilly Expanned and duly considered the proofs and allega ling of all the said parties who were duly motified of the time theace at which the said award would be made Do make and publish this our award believe the said parties, in the manner following: - First I've do award and order that John miller party of the second part

Page 17

as oforesaid is entitled to receive from John athan Reitzell The sum of four hundred and trouty seven "hou dollars (8427.94) and we do award and order that said John athan Keitzelly pay said sum of \$427.94 to said John Miller: Second. We do awould and order That said form Miller party of the second part as aforesain is centitled to receive from the Estate of Philip Reitzecl deceased the sund of two Thousand and severity lie From Dollars (\$2076.48) and we do award and order that Henry Keitzell and Franklin Keitzell Administrators as aferesaid pay to said John Miller the said Rum of \$ 20 yb. 48: Third: We do award and order that hered of thilip Reitzee form athan Reitzer and John Miller - a Schidelle of which unrettled & uppaid notes t accurity is hereto anneyed marked Schedule "-Phase be Equally divided between the parties of the fish second third parts - J. E. that Henry Keitzen and Frankline Reitzell Administrators as aforeraid have one third part of said impaid hotes & accumits and that John Miller have one third part of said hotes taccounts and that John athan Reitzell have one third part of said unpaid notes & accounts -

The Raid award so made as oforesaid by us the said Arbitration has sole seference to particulation accounts and demands Existing between the members of the late from composed of said from miller, formathan Reitzell and obility Reitzell deceased trading as particular in said leminty of of phinson. and our said award as aferesaid has not refuence to demand or accounts Existing between said parties or their Representatives therewise than as Parties or their Representatives or therewise than as Participal from said partiers if I transactions.

Sastly we do award that when the per-

Page 18 formance Severally by the said parties of the pist secand and third parts of the orders raward hereby made the said parties shall respectively Expressed to each other General releases of all claims of Demands Inching or concerning the premises oforesaid or relating to the same on testimeny whereof we have hereunto set our hacids & offiged our seals at Freeport this 22 nd day In husure of Z from No. Breuster Estate Chart Ablant Eval List of unsettled notes and accounts belonging to the Estate of Philip Reitzell deceased. Johnathan Keilzett and John Miller jointly growing out of Partruship proceedings 280.49 Notes Jared Pennington 2.19 Bailey Maylin 111. 11 Daniel Riggle 19.36 Mombumming, 2.02 Baily + Brazton 8.41 Edward Keil thell " 45 Ruse Cerper, 2.60 If m Bailed 21.39 Kenbert Kuth 1.88 S.W. Harrison 7.62 John Smill 6.48 f. Jobe 6.06 Juther Hall 3.85 Joseph Mears 15 by Benjamin Cummings 6.30 Asu Wood 11.91 The Gillet 5.69 Cadwell & Stetman 19.65 Joseph Soms 4.81 Curtise Hard 3.12 MmChillow 11 44 Henry Starr 212 John Strange 4.77 Robert Jonny 63 78 Pusley Strange 3.81 8.164.11 f. J. Jewell 21.51 Accumite The M Thee 3.50 Desire Wataroay " 58 Chester Turshall Monghelshie 26.82 molelant " 90 Leo Reitzell 36.98 Midowalagis 1.119 Doch Fire 230.49 Julius Smith

(Amot But down) 364.94 Care 19 26 Haller 11 55 O. Depue 84.90 monyder " 62 Geo M The " 25 John Glever 4 38 Edio Jours 2.29 John olocym 44.44 Noah Smith 1.66 Sand Raber 4.03 Jeremiah Beadshed 1.25 John Keitzell 248.69 \$ 488.28 ment tonit: "filed havel offears the following Endone-Mihress Listified that his beother Charles A. Clark where name is officed to said Instrument of willing as a subscribing Mithuss is dead, that said Sustrement is in the Land willing of said Charles a lelark and coas rigned by John Helark Withers, John Ko. Bruster and John 26. Addams John Ruth was swoom as a Cripmens and Plaintiffe Commel lyhibited tohim an Instrument of Miling marked Exhibits to purposting to be a Submission to Arbitvators, and the same being in the words and figures following its: Where us Divers disputes and controversies have arisew and are now depending and unsettled between Hegy Reitzele and franklin Keitziel of the County of Stephenson and State of Selinois Allimistration

Page 20

of the Estate of Philip Reitzest late of said boundy deceaned of the one part, and John Miller of the Rame County of the Record part, and John athan Keilzed of the same County of the third part Now therefore for the purpose of settling and determing such disputes, and conbroversies it is hereby mulually agreed and under stood by and beliveen the sail parties that the same shall be referred and submitted to the arbitra ment and determination of John Ho. Add ame, John No. Breyster and John Alelank all of said Connety and state or any two of them, and the said arbitrators or any two ofthem as afcresaid shall make and publish their award in writing under their hands and reals and deliver the same to the parties or to rither of them who shall desire the same on or before the brendy sight day of dugust instant, and it is hereby purties agreed and understood by and between the paid the said arbitration or any two of them as aforesaid shall take and receive & statement of the joint offairs or juint flock in trade of said Philip Keitzell in his lifetime and said som meller and said John athan Keilzree which was made in cording by said Philip Reitzell in the Fear Eighteen Hundred and Jory Jour (1844) ( Tobe produced and shown by said parties ) as a basis upon which to commence and make and publish their said purther agreed and understood by and between the paid partie that this submission may be made a cule of the leiverit bourt within and for the County of Stephen Din. ofnesaid In Bitues Whereof We the Raid parties have hereunto set our hands are seals this Dipleanto Day of August AD 1860 -

of John Ruth 3 Ho. H. Keilzeel Frankein Riegell Estat Page 21 Administrators of the Estate for Reitzen Deals John Miller Deals On the Back of which Submission appears the follow-ing Endorment Writ: Filed March 15th 1859 Descended and Collark Mitness Sestified that he signed this cociling as a subscribing nitiess- Was solveg since that he cannot remember whether the mility was signed by the persens purporting to Execute it or not. to the best of his acollection it was and in his pusurce-I. M. S. Brawley called by Rearriff testified that the writing marked Exhibit " was in his hard writing That he Knew nothing about its Eye cution, that it was not Eye cuted in his presence The Plaintiff thew offered in Evidence To the Jury the said writings refered to by Mitues John A. Clark . T. S. Brawley and John Ruth ! Marked Exhibits "Tot" to Which the Dependants Commel objected for the Joelowing reasons rig; I The Administrator under the Laws of Believes had not the legal copacity & Bird the Estate by an arbitration. I The Specteded award is not Evidence to prove the ac-I so publication or delivery of the pretended award

Page 22 4 The account was Barred by the Statutes of Similations-The prelended award is not pinal and certain b Pretendre award defective in not showing that arbitrators were swern tit no where appearing that the arbitrators were swoond— Iretended award does not pursue the pretended sub-8 Plaintiff has suffered @ discentinuance in the pur Eculian of his claim against the Estate And for other reasons enged But the bourt allowed
said miling, marked Exhibit "Ith" to be given in
Evidence to the jury. To which the Dequebants Equipted -Plf then recalled the Hitness John A. Clark and Ex-hibited to him a paper marked "D" of which the follow ing is a copy siz: Book accounts 26.82 A.B. Ames Mmm Shee " 12'2 James M Thee 85.02 The M The 3.50 Savid Neidig 3.19 James Brown 2.22 Is Keitzell 36.98 Chester Bushner 12.60 Many back acets \$50.00 , 93 Doct Friel 2.11 Hmybarris 1.42 Jared Penningson 219 John Goddard 4.81 Daniel Riegle 19.36 Midero Davis 1.00 Hailey Braytin 8. 71 Miss milcoxen 2.98 John B. Johnson 3 7.33 John B. Glingman 4.93

Chap to the Ship 3 go Haren R, Richards P. Wright 3.66 Jag 23 Ruse Cooper 2.60 Julius Smith 4.10 Henry Hallar 23.52 John Levinis 11 58 Reuben Kuth 1.84: O. Depue 84.90 6.48 Mm Dnyder John Smull " 622 3.85 Mm Johnson Luther Heall 13.43 6.30 J. H. Verbeck Heny burnings 1.94 " 81 Lorain Kima 3.27 Samo Fisher 6. 07 Levi Lucas 21/22 1.12 form mc Plenny Jr. Ho, Houyes 5.06 James murdagh 41.57 Ded M Thee " 25 The Gillett 5.69 John Clerur 4.38 Peler Fisher 1.28 Elevan Jegne 3.00 logo 224 Dan S. Hawley 1.36 John Slocum 4444 Jesse Jones 6.62 mussing milchell 38.19 " 50 Alfred Goddard Jan' Dikens 11 56 fal Norris 4.81 fackson Rickard 1.05 James Ligison 2:55 Charles Morrick 16.111 midero Milcogen 16.81 Mm Milchie 5.00 James Mil corper 18.116 Amon Parriott 40 Ju Chilton " 44 Herry dult 11 56 J. W. Glingman " 25 Bl. Milliams R.G. 14.52 4. yy A.Chamberlin Esy John Stranger 111.04 2236 Robert Barbour Isaad Heleckur 4.12 Gro Teurster 293 Noah Smith 1.66 Geo Ilgen, 8.66 Sam Raber 403 Prepley Strange 3.81 Sarah Reitzill 23.30 John J. Jewell 21.51 Jerenicah Blodsked 1.25 427.84 John Reitzell 248.69 Desiah Heatharay 28 507.110

(dage 24 Soles Amt Brot up 475.196 myhore 15.98 J.B. M. Elhennes 215 R. Slaum 48.86 Jal McCool 38.75 14.60 maging Robert M Ghee 18.43 Bailey & Bayton 111.111 Book a/c 4.05 Robert Jones 20.32 Mm Milson RS. 9.19 Mulmuminde 202 Ja Mussel 3.81 Chat Cummings 1.111 Curtis Way a 3.12 2 Edmond Keitchen " 45 Homy Slaw 2.12um Barbores 21.79 Kolunt James 63.78 I. Canfield UmRobey 23.26 59.83 flelino Esy 10. 34 John Milson 80.111 Led Disher 16 39 Michael Duyder 23.14 Heiram Glingman 29.45 Trave Odolgate 7.69 fat Silus Barber Esquire 3.87 21.29 Kirkpatrick Englihart Forsler 14.76 15.110 Jas Barnes 6.99 8 827.58° 6. Billett 3.622 Wilson Ecalonica 22.04 J. Mr. Ul arrison 7.62 Carpentey miller 14.49 Jucob Streeter 26.32 Clias Gerver 10.01 J. Job 6.06 Mmm Smith 14.63 Mm Baum 14.24 Ja Mears 15. leg Sam Mains, 7.66 Henry Terbe 6.94 Ara mod 11.91 Starvey Osburn 29.84 badmen 19.65 Montohnsen 111.110 Abner Glingman 2.25 4751193

Company Stock To the pollowing Page 25 John Miller Amomb 3220.86 John Ruth Do 2220.14 1011.411 Mussina mitchell Treby 1/41. 123.44. Int 21.84 145.28 Stroenson o 60 March 26/42.304. go. In 36.84 34474 George Fourster " . 80.110 Sut 11.20-pd & 27.00 64,20 Jacob Ruber - about .. 111-1111 Joseph miero . 111.00 C. Y. Epley 70.88 \$6186.53 By Said Mile Property 32011.119 Book Seemst outs standing ? notes of hand 31811.45 9111.00 30.00 1 Magon Do 311.110 1 Fanning Mill Do 12.110 1 Joke Cattle P. Reitzett 55.10 1 " Mosto " Do 1 " klaugh " Do 1 " Do Jono Micles 1 Store of pipes 65.00 5.110 5.00 10.00 Paid for Rutho Land \$26.77 Feby 1/41
Book account P. Rilzell Logu. 64 40.00 385.45 1394.66 blaim afe So \$ 6162.11 John Rutto le on Back 13.00 p for Ruter Luce 50.00 Dalery in Store 150,00 Mobado account 104.111
Milson 4.00 4.50 112.60 \$ 1111.114

Vage 26 The within Statement of the offairs of the firm of Reitzett miller officilzall was taken by agreement of parties as the basis of the settlement this day made by the undersigned who new thorus as arbitrators by the parties Sugart 19. 1850 John 16. Briaster John Me. Briasler ... John A. Clark On the Back of which the pollowing Endorsement of-hears tomit: "Filed March y the 1859" De Ho. Sundert and Collerto Thhus testified that the paper marked "" was before the arbitrators an Endonement therein purporting the signed by mituess form to Adams of John 16. Brews to said endonement being in the words officers follow The within Statement of the affairs of the firm of Reitzell miller & Rietzell was taken by agreement of par ties as the basis of the settlement this day made by the undersigned who were chosen as arbitrators by the porties. Sugust 19.1850. John 16. Add dams John 16. Brewster John A. Colanto John A. black is in hand writing of the Mitness The witness is also shown a paper marked "6" of which the polonoing is a June 6. 1845. John Miller Lev To eash for a. H. Wight 854.011 May 11.1844 So So cash 10.011

Dr. 1844 Company Stock 3220.86 John milles Amount Page 27 John athan Reitzell Dr 222017 John Ruth 100.40 Musica mitchell 123.40. Int 21.84 145.28 Strown 160 - march 26/42 304. 90 - Sut 36.84 344.44 JES Fruist 850 - Int 11.20 haid 24.00 64.20 Jacob Rabed 10.00 Joseph Meare 111.00 6. 9. Epley 70.88 Cr \$6186.53 By Saw Mill Property 32110.110 Book ofe outstanding? Notes Do \$1811.45 9110.111 1 Toke Cattle (Johnathan) 30.00 30.111 1 Magon 1 Franning Mill Do 12.01 1 Woke and 1 Yoke cattle (P.K.) 55.111 200 65.110 1 Reaght 5.111 Ino miller) 5.011 1 Stove ofipe 10.00 I pri Mice Stones 326.79
Por Rutho Land 58.68. Tom 8 p Dby Reuben 711.00 385.45 Book of P. Reitzett - you. oo blaim of 694.66 139466 8 6162.11 John Miller Dot claim of Somb. meblue \$ 1825.00 les- Said Samb. Mcbline \$ 150.00 Egra B. Gillet 5111.110 House \$1111 ocarriage 80 180.110 Suit with Teo Reitzell 982.00 81812,00 813.00

Hitrees states that this paper marked "E" was before the Cage 28 arbitrators and an Endorsement therein signed by mities John Hiddaus and John 16. Brewster in the words and pieures following wis: - The within statement of the offices of the Firm of Reilgre Miller & Reilgre was taken by agreement of parties as the basis of the sittements this day made by the undersigned who were chosen as Luguet 19. 1850 — John H. Addams Lynet 19. 1850 — John Helank Is in hauswilling of mitues -Endorswent tonit: "Tiled March 7.185.9 Dello Dunderland Coblish Off also shows the nitress @ poper marked "of which the pelowing is a copy viz: Dr Company Stock To amount Due to Ino miller 3220.86 Do Johnathan Reitzew Do John Rent 2220.14 100.40 Do Dody 1/44 Mussing Mitchell 21.845 145.28 Do March 26/42 Stevenzen Son 36,845 Do Georgina Jeo Gust Jul 11.20 527.00 34494 64,20 Joseph Raber (about) 10.00 200 Joseph Mier 20 111.111 6115.65 Coloply 20 20.88 6186.50

Cor By Dard Mill Property of Siebshulz 3200.00 Page 29 Roter of Hound SI811.45 900.00 30.00 1 Do Do (Philip) 03.00 1 Mare Do 1 plough Do 1 Danning Mill Johnh, 65.00 5.00 5.00 12.00 1 Pr mice Stones 40.00 111.1111 Paid for Ruths Land Gray 141 326.77

Paid for Ruths Land Britzell 870.00

Book account P. Reitzell 694.66

On claim of Gillett

County Orders 877.00

Lecenset P. Reitzell of Seo Reitzell 30.00 385.45 1394.66 61621-11 38.50 32.88 DN - Joro miller (Grankerbeyer) 25.00 Advance on Property Soles 300.00 \$ 6538. 49 John Ruth les on Bosto 13.00 Cash for Ruth Land 50.00 150.00 213.00 To Book accument 104.10% Milson 4.50 Heurs 4.00 112.60 100.40 To Shrigher at mill Epley bash Reed of Esy Glingman

Dohnathan Keilzell Dr br Cage 30 To Mattocks claim 135.00 Bills paid at city Expenses or 459.00 18918,00 511393 money takew out in June 140 9 96.00 Rece of Les Smith 1841/- Tor store use 500,00 Do of Hillburt o Hay - 168.00 3134.44 216.84 His Service in Store I'z grav at 15m g 1 Boarding for Ruth at \$50, is 230 } 345.00 3449.74 Que in Store 519.10 mattock's claim 735.00 Interest for the gran 1254.10 8 2225-64 Witness testifies that paper marked " was before the Arbi John H. Addains o John 16. Breuster in the mords and She within Statement of the offairs of the dinn of Ritzer Miller & Reitzer was taken by the agen ment of parties as the Basis of the settlement this day made Lugust 19.1850 - John H. Bruster foly A. bel aut Is in handwilling of nitruise -On the Back of which poper marked "" oppears the following Endowsement tonit; -"Giled March y to 1859"-D. H. Sunderland Cobbet Primese thinks papers "D" "E" + " were used as indicated

by the Endonements therein, set port unel formed the basic from which the award was made John Kuth Jage 31 of Johnathan Keitzell were present with the arbetration and thinks one of the Administrators and puhaps both were present all the parties were present Except Derauklin Keitzell not certain asto him -Paper marked "" of which the pollowing is a copy viz: In County Court of John Miller Dephensin County of Heilzale Administrators of the March Jum 4.0. 1859 -Estate of Philip Keitzell Deceased Basis of woard made by John Ko. Brewster John A. Clark & John Ho. Addams in settlement of Company ac counts of Administrators of b. Reitzell dece form Miller + John achaw Keitzell made august 19.1850. The basis of such settlement being a statement made by the late Philip Keitzell march 1844 and agend to by the parties above named-John Miller is credited by capital Socto including 3321.26 Int from march 1.1844 to dug 19.1850 1286.91 4648.20 To Bonds assumed of & Smith 450.114 Int from Juny 1.1845 To Aug 19.1850 25813 11118.13 Arte from Nov- 30. 1842 To Aug 19. 1850 400.00 185.111 585.111 O. 26. Wight account 54.111 Int from May 24.1844 to march 1.1800 20.12 74.12 Sundry accounts (Clingman each telingles) 88.40

Int from March 1.1844 Diday 19.1850

53.18

14.48

Amt paid Estate of R. Seadam Caje 32 24.60 Int from farmy 30. 1849 to Lug 19. 1850 2,55 80.15 Hough & Frankebuged account 30.00 Int from murch 1.1844 today 19.1850 11 62 41,62 Amt assumed of Kutha 385,40 Int on \$ 326. 74 from march 1.1844. To Aug 19.50 126.62 512.11.2299.24 828118.93 brby netts prefile-Amt due John Miller 195.49 8 2504 42 Johnathan Reitzell is credited by Capital Stock march 1. 1844 2220.14 Int from March 1, 1844 To dug 19. 1850 860.31 3080.48 Stroenson too mitchell rothers 644.22 Int from March 1.1844 To Lug 19.1850 249.63 893.85 S. Smith Bond 450.00 ent from Jany 1.1845 to Aug 19.1850 258.13 11113.13 form miller Note 400.00 Sundry acch (Clingman cash & Shingles)
Int from May 27.1844 to Aug 19.1850
On Min how account 185.00 585.00 38.75 00,18 14.43 On Wight account Int from May 24. 1844 To Aug 19. 1850 74.12 5689.76 20.12 So amt of mill properly sold 3500.00 Int pom May 27.1844 to duy 19.1850 1303. 45 4808. 45 Whole amt of Actis tacch collected 1043.86 Int on the above 216.1111.1289.86 Oyen & farming mill be Int from march 1844 to Aug 19. 1850 43.59 156.09 Rent of Saw mill from march 1.1844 to may 24. 1844 50.00.6299.40 609.94 By new profits for Reitzell \$ 427.94

Administration of Philip Reignes Qued
To Amt agreed march 1. 1844
" Loke Open Ware de Del Page 33 1394,16 233.08 1627.74 Int from march 1. 1844 to Aug 19. 1850 630.45 2258.49 182.00 I Amt dere from Administrators 2046.49 Amt due from for Reilzell To for miller 424.94 & Amt due from administrators of 8. Lilgell Deed to John Miller those Ambole amt due for Miller 2046.49 \$ 2404.43 Shown to thiness. Hiliess thinks the paper marked "" is in the hand writing of John to Add ame not certain. The paper marked "I" was drawn up at the stime of the article alter don't remember any thing Else being before us Except what was in the papers marked "E." E. J. " I G". The account in this case marked Exhibit I'm is in the hand writing of this Hitness-All the papers marked "" " " " remained in my popelsion. Witness can't say how many copies of The award were made out has no recollection at all in regard to the member of copies of the award made cut. The award being the paper marked B' is in the handwilling of my Brother -On crossegacionation this Mitues ( John Allack) 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 accounting to a recollection that we were smoon remember but little about it Except what appears upon these papers referred to by me - my impression is thatthe arbitration were sum by Esy montitues. I am

prietive he was there and my impussion is we were Jan 34 seven. thinks folin Ruth was @ Witness before the Arbitration touching some ofthe accumits, would not of Reitzell to or whatever the name was level in the Store That any one was boom as nituesses pirhaps form Ruth Droye Kisto Keitzell were and puhaps not. has no recollection about it the whole thing is out of my mind of then offered in Evidence to the jury the papers referred to by the Milues formet Clark Being The papers above referred to t marked D. "E" " " " " to which The Dependants objected but the bourt allowed said several papers to be given in Evidence to the jury to which the Dependants by their connsel Excepted Thomas & Turner was then swom as @ nitress for the Plainliff and testified that he had Kenown Werny K. Keitzer since he was a boy. Witness was Employed by Reff 4 or 5 years ago in reference to collecting his claim, against the Reitzree Estate and about that time Plf & Herry R. Reitzet came to his (Hitness) office and talked about the award. it might have been J. &b. years ago, cant tell exactly when miller had been there several times before. Peffreounsel ask this

by Plf 4 or & grand ago in reference to collecting his claims against the Ritger Estate and about that time I ff to bleimy Be Ridger came to his (tituess) office and talked about the award. it might have been sails years ago. can't tell es a all when, miles had been there reveral times before. Plffreounsed ask this titues the planing question his; If themy R. Ridger and Plaintiff came to your office and talked about the award what did they sais to which question Defendants coursel objected. But the levert allowed the question to be asked of the tituess to which the see pendant by his comme to greeted. Pictures to which the see pendant by his comme to Reitzer came to his office logition and Reitzer paid they didn't want to have any law about it; that they were mighton, and didn't want to have any law about it; that they were mighton, and didn't want to have any law

Page 35

deal Miller lemarked to Reigew that if it was not paid he should see, ashe had waited long rungh, said Reitzill had tried to Euche him out of the claim by preventing him from pling his account but he had pled it. They went out without doing anything got a little cross before they went out they talked about Millers claim not being filed in time. they were gone out 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 toit. and he would go home and pay it any way. They their took the papers and went away this was often the claim was filed in the Court this Festiming of this Withing was of ja cled to by Defendants Commel but the Court over ruled Defendants objections and allowed the lestimony to go to the Jury to which the Defendants by their Connel Excepted-

Johnvathan Reitzree a Wilness for the Py testified that he was present at the Exhibition artito ation both Administrators were present. I presented my account cant seign that the Administraters and Miller presented tithess examined the papers refued to by the Gibres John Alelark above refered to & marked 20" E"G" G" - Thinks these papers were before the cubitraton, there was another matter the individual account laid before the arbitration but it was not considered by them at which withers was dissatisfied On his crossey amin ation this Miluess lestified that he had no Kenverledge of the arbitrators being swoon. Hitness didn't think it necessary they should be soom had so much confidence in the men that he didn't care whether they correseom or not They coure not second tomy Kenewaldge. Hitness didn't see them secom I was there all the time long before

their commenced and during their sitting -On his direct reacion ation being resumed this Witness listified that folm Ruth Jeory Reitzell were about arbitration, they were not seven as Witness Page 36 to my Kenewledge -The Plantiff also produced as part of the ples of said brobate beach in this cause the following State of Selining To In the County Court of Stephenson Stephenson to 1859 John Miller Estate of Philip Reitzell Deco Franklin Reitzell Administration of the Estate of Sink- In Grap You will please latte Prolice that on the fish day of the March Ferni A.D. 1859 of the Staphenson Church I will appear to make proof of my claim against the above named Estate according to laws at which time you are notified to whear Frehend Frehmary 16th 1859 John Milley By Ally for Complet Melaimant State of Remis 300 from miller of lawful age and duly sword according to law dethe depose and say a copy of the within notice upon story R. Rilgell and Franklin Keitzell Administration of the Estate of thilip Keilzell Deceased by handing to ruch of them a copy

in person and further this Depengent Rayet noto. omm to sechenbed before John Philler me this 15 th day of May ch 18 18 18 Page 3> Datil Ho Snylderland Collecto 5 Is being his notice to the Administrators under which his claim herein was presecuted this paperbeing marked ". On the back of which motive oppear the following Endone ments of piling trait: "Triled March is to 1859 "
"Tiled Spil ot 1859 S.M. Trile air Clk" During the progress of the hial it was admitted and agreed by the parties that Philip Reitzell had died Some linde about the month of march or April 1850. and that letters of delministration upon his Estate wery granted to the Defendants by the Bobate Court of Stephenson Cumity on the severith day of May AS 1850 and that the Administrators gave the notice for the fre sentation of claims against said Estate for adjust ment at the August Ferm A.D. 1850 of said Brobate bourt said Sugust Ferm terminding by adjournment it "B" "6" D" & "Fr" "S" "for were filed in the Probate Court is they are severally marked and were all the papers that were peut offere the Probate Court and produced. in the trial of this cause in this Court in this case -Affs benned their asked the beaut to give to the jury the following instruction viz: If the fury pind that the award of the Arbitration was a settlement and adjustment of accounts

against the Estate and if the Jury find for the Hain Page 38 tiff then the Rainliff is sutilled to interest from the date fite award" On the Back fishich Instruction offears the following Endorsement to mit: "filed fan 19.1860"-A M Geileau CK" Which Instruction the beaut gave to the frey as asked by Peff connsel, and to the giving of which instruction to the jung the Defendants Excepted-Plaintiff of which vallet the following is @ copy rig: No the Juens find for the Rantiff, and assess the \$3255.65 Damages A.M. Rice Newton Mallery Charles 26. Kosenstice MmK. Fursh R.D. Nater Jevy of Trolf Hell. Best Dr. Derfinit Daviel De Graff 6. Derane Leary Mohe Levois Joiner On the Back of which budick oppears the following Endersement truit; "filed fan 19.1860"-A M Julian Ch" Thueupon the Defendants neved the bourt for a new fled his pinits in within specifying the grinds of such motion in the words and figures following mg:

Staph bivbeurh
Alemy Reitzell Et al 3
Administration or 3
Appeal from bobourt

John Miller 3
And must ab this day of Oup 39 the said Defendants ofthe their motion for a new trial tim arrest of Judgment for reasons following-I The Mudiet of the Jury was not Warranted by the Didich was centrary to the Evidence 3 Improper Evidence was submitted to the Juny -4 Erroneus Instruction of the bourt -Shere was no proper filing of the Plaintiff claim Either in the Compbelow, or in this Court I There was no proper pling of the Plyts claim within the I the Plainty claim was barred by the Stottete of requiring it to have been filed within two years from the Granting of letters— 4. The Plaintiff claim wasbarred by the Statute of Sim itations -The Defendants are Entitled to Judgment in their favor on the Record oproofs - Browles & Marsh for Defendants

Till the the Me ... It is a true to the On the back of which motion to officers the following Enderse week towit; filed Jan 25.1860" notion of dynalants und coment of parties it is or he all owed or with the d. M. Tuitean clh" And the Plaintiff herein came and remitted Eleven, hundred and seventy nine hos dollars from his damages as found by the Jury in this cause the Court overruled said motions of the Defendants for a new Irial and the motion in arrest of Judgment to which The Defendabite by their Counsel Excepted and prayed from Miller Salzay of that this their Bill of Exceptions might be Signed Stated and made a part of the Record herein, and it was done So accordingly Benj M. Sheldon EStal On the back of which Bill of Exceptions appears the hollowing Endoment tomit: Dicled February 16.1860 I. M. Juileau clirk" And afterwards tomb: on the 4th day of Troby 1860 the following Entry appears of Record in this cause Trint: And afterwards trint: on the 29th day of February A. S. 1860 The following Affect Bond was pled in Luid bourt tomit: Know all men by these presents that We Jemy W. Keitzell and Franklin Reitzell Administration of the Estate of Philip Reitzew Secrased as principal, and Charles Reitzew, Cyrus J. Reitzell and F.M.D. Trauley as surdies are held and primly bound unto John miller in the penal sum of Shrythen Rand Dollars Caroful money of the United States for the payment of which well and truly to be much we bend ourselves our heirs Execution and Admin istration jointly severally and pinnly by there pres Ents-Wilizes our hands and seals this fourth day of Stronary A. N. 1860Page 41

The condition of the above obligation is such that whereus the said John miller did on the second day of trebruary A. D. 1860 in the Circuit Court of Strphenson ment against the above bounden Horny R. Reit Zell und Grunklin Keitzell Administrators of the Estate of Philip Reitzell Deceased for the sum of the Thousand and Deventy die Dollars and July Eight cents to be paid in due course of Administration from which Judgment the said Herry R. Reitzell and Feranklin Reitzell Admin-istrators as aforesaid have prayed for an aphe al to the Supreme Court of the State of Selivis Two if the said Herry R. Reitzell and Frankline Ritzell Administrators as afor Esciel shall pay the amount of the Judgment Costs interest and dam-ages in 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 - 16. R. Reitzell Estate Grankelin Reitzell Et als Grus f. Reitzell Grat

On the Back of Which Appeal Bond appears the following Endorsement tonit: "Filed Freby 29. 1860""S.M. Guile air Clk"
By The North Dep

State of Illinois 300 Suther M. Juile aw Clerk of Page 42 The Circuit Court, within and for said bounty of Stephenson and State of Illinois We hereby certify that the foregoing is a true and complete copy of the Record of the Judgment and of all the proceedings had in a certain cause wherein John Miller is plaintiff and Werry R. Reitzell and Frankelin Keilfell Administrators of the estate of Philip Keitzell deceased are Dependants as The same appears of the Records and files of said bourt in my office tonit: - Appeal Bond from County Court - Transcript from County Court Summone Account "" arrand "13" Submission "" - Company Statement Papers - 18 asis of arrand ""

Notice of John miller " Plajintipped time - Tradict of fung. Soints in motion for new trial, Appeal Bond- Bill of Exceptions - In Mitness Whereof I have hereunto set my hand and affigred the real of said bourt at my office in Freeport in said learning this y's day of March a. D. 1860 Attest- Luther W. Trilean Ceferto by The North Deputy

In The Deference somek of The State of Minty Third hand Division If the April from Sololeo Hurs & British and & Sphul from gohn Milen Seere & Stophenson. afternal, tout on the 17 to day of April AD, 18les it this Zame turn of the Couch leafon The Justing Thung come the road kny R Right and Mouldin Ruttle administration, of the Estate of the istale of thelip thityele deseared by from landed hoppmon, their thoney and Cay That in The March and proserving opening ence als in The midition of the In Grand apouxoid Then a mainferst arran in The Front; The Court below could in atenting une proper evilence to be some to the

July by clamant Un lout ledon word in joing to the Juny the instruction as asked by Obannouts Comment Sheet the undick of the Juny on, Continue to the wider in the come That the sendret of the Jung way The Couch helow creed a overeling degendont motion bon a new Time The Court lestors would in sourching defendants motion in wrench of Me could below creek in buding Myment en the Audick The Court leders, errel in budwing the judgment about in manne and form as I was done I the court below erred in sudning

July by clamant Un lout ledon word in joing to the Juny the instruction as asked by Obannouts Comment Sheet the undick of the Juny on, Continue to the wider in the come That the sendret of the Jung way The Couch helow creed a overeling degendont motion bon a new Time The Court lestors would in sourching defendants motion in wrench of Me could below creek in buding Myment en the Audick The Court leders, errel in budwing the judgment about in manne and form as I was done I the court below erred in sudning

when is the lars of the land In ah Jufment englit to hom been under I for the dependent. The Court beaution to going on and one of the time to may then the prograch examile for the urrow aboutail in the breach and procurings afore-Said may be hoursel untilled and altythen held for hotting and that They may be instored is all things which they have lost by account of the mil Judg. Sam lempe Justings Stays

Supreme Court Rugelordals John Buller Lorndon Error Filed April 24, 1860 Leland Elech

State of Illinois Third frank Tuprem Court ) division Afril Term Orsto. HEnry Potestell and Franklin Reitzelle Apotos Offens Administrators of The Offens Estate of Pholif Reitzelle See Jon Staphenson John miller Apelled And now comes The said Oppellee by Jumer Ingalls his allowneys and says That Cheris no Error normanner genor un said record or proceedings Wherefore the prays Judgent Tho Thomas Fred & Bryestlo All friffler John Heiller

16 R. Reitzill Et.al Filed April 10.1860 Le Leland Colum