

8520

No. _____

Supreme Court of Illinois

Rowan

~~Brown~~ et al

vs.

Bowles et al

At a Circuit Court begun and held at the Court
 Room in Hannibal for the County of Gallatin
 in the State of Missouri the following proceedings
 were had In a certain Suit in said Court
 pending wherein Stephen R. Rowan and
 Nancy Ann Rowan his wife are Complain-
 ants and John Reed and Joseph Bowles Rebecca
 Bowles Andrew McCallin and Mary Ann his
 wife Josephine, Mary, and Andrew J. McCallin
 Defendants to wit:

Copy of Bill

State of Missouri. Gallatin Circuit-
 Gallatin County 3^d Court - Oct Term 1855

To The Hon Edwin Becker presiding
 Judge of the 12th Judicial Circuit of the
 State of Missouri and presiding in the Gallatin
 Circuit Court humbly Complaining unto
 your honor Your orator and oratrix
 Stephen R. Rowan and Nancy Ann Rowan
 his wife would respectfully represent that
 John Reed late of said County deceased
 the father of your oratrix Nancy Ann Rowan
 was in his lifetime and at the time of his
 death seized in fee simple to him and his
 heirs of the following described lands to wit

A. N. S. W. gr	sect 12	T. 8. N. 9 E
E. R. S. W. gr.	" "	" "
W. R. S. E. gr	12	8 9

N ^o SE	Dict	1	T	9	R	9	E
N.E. gr	12		9		9		
N.W. gr	12		9		9		
SE gr	12		9		9		
E ^o N.E. gr	11		9		9		
S.W. N.E.	11		9		9		
N.W. gr	7	-	9		10		
N ^o SE	7		9		10		
N.W. gr	18		9		10		
N ^o N.E. gr	18		9		10		
S.W. gr	18		9		10		
SE gr	18		9		10		
N ^o N.W. gr	17		9		10		
N.E. gr	10		9		10		
N.W. gr	20		9		10		
N ^o N.E. gr	20		9		10		
E ^o S.W. gr	20		9		10		

Containing in all

And also in Lots in Shawmutown known
 And described on the plot of said town as
 as Lots No. 847, 1024, 1025 & 1021 all
 which lands and town lots are lying
 and being in the said County of Galloway
 and State of Missouri, and being so seized
 by the said John Reed did many years
 since to wit on the day of Feb'y 1847
 deposit this life interest leaving Maryport
 Reed his widow and your oratrix Anne
 Ann and her brother John Reed Jr

Son of the said John Deceased and
 Alexander Reed grandson of the said
 John deceased and Rebecca Bowles grand
 daughter of the said John Deceased
 (which said Rebecca is the wife of Joseph
 Bowles a resident of said County of
 Gallatin) his only heir at law him sur-
 viving and upon his death the said
 lands and hereditaments descended
 upon and came to your oratrix the
 said Nancy Ann and the said John Reed
 Jr and Alexander Reed and Rebecca
 Bowles Subject only to the dower of the
 said Morgent widow as aforesaid

And your orator would further
 represent unto your honor that the said
 Alexander Reed afterwards to wit on or about
 the day of AD departed
 this life leaving him surviving his mother
 Mary Ann McCallin wife of Andrew McCallin
 and Mary McCallin Josephine McCallin
 and Andrew J. McCallin the half brother
 & Sisters of the said Alexander Reed deceased
 his heirs and heirs at law to whom
 his interest in the lands of the said John
 Reed deceased immediately descended
 and vested in them

Your orator and oratrix would
 further represent unto your honor

That they in right of your said oratrix
are seized in fee of and in the undivided
one fourth of the above described premises

That said Joseph Bowes and Rebecca ~~Bowes~~
in right of the said Rebecca are seized
in fee of and in the undivided one fourth
of the said lands

And the said John Reed Jr is seized in
fee of the undivided one fourth of said premises

That the said Andrew McCallin
and Mary Ann his wife in right of his
said wife is seized of the undivided one
tenth of said premises - And that the
said Mary, Josephine, and Andrew J.

McCallin are seized in fee of the undi-
vided one twentieth of said premises each

That the said Andrew McCallin and Mary
Ann his wife in right of the said Mary Ann
and ^{the said} Josephine Mary & Andrew J. their children
being collectively seized of and entitled to
the undivided one fourth of said premises
as the heirs and legal representatives of the
said Alexander Reed deceased

Your orator and oratrix would
further represent unto your honor that
the said Josephine McCallin Mary McCallin
& Andrew J. McCallin are infants under
age for whom your orator and oratrix
pray that a guardian ad litem may be

2
appointed by this honorable Court to litigate
for them in this Cause

Your orator and oratrix would further
represent unto your honor that the house
then form of the said John deceased was
at the time of his death and still is a very
valuable one that the dwelling house situate
thereon at the time of the decease of the
said John was of a very inferior char-
acter and greatly out of repair and was
very unsuitable as a residence for the
said Morgant widow as aforesaid who
was very aged and infirm and your
orator the said Stephen after the death of
the said John at the urgent request
of the said Morgant widow as aforesaid
being in right of his said wife one
of the Coparceners as aforesaid moved
onto said form and for the convenience
and comfort of the said Morgant and
for the enhancement of the value and
use of said form and with the knowledge
approbation and concurrence of his
Coparceners he erected thereon a fine
brick dwelling house at a cost to
your said orator of about Eight
hundred dollars your orator also had
about 40 acres of ground cleared
and put into cultivation at a cost

6
to your orator of about two hundred
dollars Your orator also had about 300
rods of ditching done on said farm at
a cost of about 60 dollars all of which
are permanent and valuable improve-
ments and still remain upon said farm
and have added to the permanent
value thereof in the sum of about -
One thousand ~~Sixty~~ dollars or more

In addition to the said improvements
on the homestead farm as aforesaid
your orator the said Stephen Caird
to be erected on the farm known as
the Little Bottom Run farm a double
log cabin residence at a cost to your
orator of about \$30 which still
remain as a permanent improvement
thereon and has enhanced the value of said
farm say about fifty dollars and is the
house in which Andrew McCallin one
of the defendants herein now resides
The said last mentioned building was
also erected with the knowledge appro-
bation and concurrence of the defendants
herein and was necessary and proper
for the reason that there was at the
time no residence on said farm
either for the use of a tenant or
for any of the parties owners of said

premises And your orator intends that in equity he is entitled before a partition of said premises is made to contribution from his said Coparceners for his outlays and expenditures in erecting said dwellings and making said improvements or to have the portion of said lands on which said improvements and buildings are set apart to your orator and his said wife without taking into account the enhance value thereof occasioned by the said building and improvements.

And your orator and oratrix further shew unto your honor that they have frequently applied to the ~~said John~~ ~~and~~ defendants in this bill and especially the adults and hope that the said John and Joseph Bowles and Rebecca Bowles his wife Andrew McCallin and Mary Ann McCallin his wife Mary McCallin Josephine McCallin and Andrew J McCallin all of whom are prayed to be made defendants to this bill would consent to an equitable partition of the said premises and have requested them to join and concur with your orator and oratrix in making a

just fair and equal portion of the said
premises between them and to make
to your orator ~~as~~ just and fair and
equitable allowance for the expenditures
made to him as aforesaid in order
that their respective share and propor-
tion thereof might be allotted held
and enjoyed in severally according to
justice and the equity of the case

But now ~~say~~ it is may it please
your honor the said defendants Combining
and Confederating to have wholly
failed and refused to make the partition
and division of their said lands upon
the equitable terms and basis aforesaid
and your orator Charges that the said Andrew
McCallin and Mary Ann his wife and
Josephine Mory and Andrew J McCallin
Combining and Confederating with
their Co defendants herein and with
divers other persons to have wrong and
injure your orator in the premises and
to wrong ~~and~~ defraud and deprive him
of compensation for his said expenditures
aforesaid have presented and filed their
petition for the partition of the lands
above described on the Common law
side of this Honorable Court where as your
orator and oratrix are advised their agents

in the premises cannot be heard and investigated and they are urging and pressing for a judgment or order for partition in said cause on the Common law side of the docket so as to defeat the equities of your orator in the premises and to deprive him of all Compensation of his aforesaid expenditures

All which actings and doings pretences and refusals are contrary to equity and good Conscience and tend to the manifest wrong and injury of your orator and oratrix in the premises

In consideration whereof and forasmuch as your orator and oratrix can only have adequate relief in the premises in a court of equity where matters of this nature are properly cognizable and relievable To the end therefore that the said defendants may without oath, their oath to their answer being hereby expressly waived to the best and utmost of their several and respective knowledge remembrance information and belief full true ~~and~~ direct and perfect answer make to all and singular the matters aforesaid and that as fully and particularly as if the same were here repeated and they and every of them distinctly in-

1
interrogated thereto and that a Commission
of partition may be issued out of and
under the seal of this honorable Court and
directed to certain Commissioners
therein named to assign the dower of the
said Morgent widow in the said lands &
apart divide and allot the said lands
hereditaments and premises according to
the respective rights of the several parties
as heretofore set forth and that after an
allowance is made to your said orator
for his expenditures aforesaid according
to the direction of this Honr Court or the
lands on which said improvements are
made being set apart to your orator and
oratrix without taking in to consideration
the enhance value thereof occasioned by
said building and other improvements that
one full and equal ~~one~~ fourth part or
share may be allotted and conveyed to
your oratrix and orator in right of
the said Nancy Ann and that one full and
equal fourth part or share may be allotted
and conveyed to the said Joseph Bowler
and Rebecca Bowler his wife in right of
the said Rebecca and that one full and
equal ~~one~~ fourth part or share may be
set apart or conveyed to the said John
Kend Jr And the remaining one fourth

part may be set apart and allotted to the said defendants who represent the interest of the said Alexander Rind and also to with the said Andrew McCallin & Mary Ann his wife and the said Josephine Mary and Andrew J. McCallin and then subdivided between them if susceptible of such subdivision or partition.

And that your orator and oratrix and the said John Rind and Joseph Bowles and Rebecca Bowles his wife and Andrew McCallin and Mary Ann ~~McCallin~~ his wife and the said Josephine, Mary and Andrew J. McCallin may severally hold and enjoy their respective allotments of the said hereditaments and premises according to the nature thereof in severalty and that all proper and necessary conveyances and assurances may be executed for carrying such partition into effect and that your orator have such further and other relief in the premises as the nature and circumstances of this case may require and to your honor may seem meet. May it please your honor to grant unto your orator not only the peoples most gracious writ of injunction issuing out of and under the seal of this hon Court to be directed to the said Andrew McCallin & Mary Ann his wife Josephine

Mory & Andrew J McCallin to restrain them from proceeding at law against your orator and oratrix touching any of the matters in question but also the people's most gracious writ of Subpoena to be directed to the said John Reed Jr Joseph Bowles Rebecca Bowles Andrew McCallin and Mory Ann his wife Josephine Mory and Andrew J McCallin thereby commanding them upon a certain day therein to be limited personally to be and appear before your honor in this Hon Court - and then and there full true direct and perfect answer make to all and singular the premises and further to stand to perform and abide such further order direction and decree therein as to your Honor shall seem meet - And your orator and oratrix shall ever pray
 &c

Your orator and oratrix would further represent unto your honor that the title deeds of the said real estate of which the said John Reed died seized as above stated are in the possession of the said Joseph Bowles one of the defendants herein and they therefore pray that he be compelled by order of this Court to bring said title deeds and all writing in relation to the title of & to said premises unto this Hon Court - there to be deposited

for the use and benefit of said Complainants
and of all other persons interested therein
and that after making such portions
and division such of said title deeds and
writings as shall appear to relate solely to
any particulars thereof which shall be
attested to any one person may be delivered
to such person and that the rest of such
title deeds and writings may be deposited
with the master of this Court or such
other place as the Court may direct for
the safe custody thereof and that all persons
interested may be permitted to take copies
of the same

S. R. Rowan

Attorney at Law Rowan

S. S. Marshall Sol for Compts

State of Illinois }
Gallatin County } Sol -

Stephen R. Rowan being duly
sworn on his oath says that the matters and
things contained in the foregoing bill of
Complaint are true to the best of his
knowledge information and belief
Sworn to and subscribed }
before me this 24th day }
of October 1855- } Stephen R. Rowan

J. E. Hall CLK

Filed 27th Oct. 1855 J. E. Hall CLK

Order of CourtSaturday 3rd November 1855.

Stephen R Rowan
and Wife } Injunction
vs
Joseph Bowles et al. }
ordered that this cause
be continued

Answer of Jos Bowles & wife

The answer of Joseph and Rebecca Bowles to the Bill of complaint of Stephen R Rowan and Nancy Ann Rowan filed in this Court against John Reid, Margaret Reid these defendants and others,

These defendants saving and reserving &c. for answer to so much of said Bill of complaint as they are advised is material or necessary for them to make answer unto answering say. That true it is as alleged in said Bill that the said John Reid senior deceased was at the time of his death seized in fee simple to him and his heirs of all the lands, town lots and real estate as described in said Bill of complaint and that said lands, town lots and real estate are lying and situated as in said Bill is alleged. and being so seized he the said John Reid Sr. departed this life on the day of February 1847 intestate - leaving him surviving as his only heirs at law the said

John Reed, Nancy and Rowan and the others as alleged in said Bill of complaint to whom the said lands town lots and real estate descended in the proportions as set forth in said Bill subject to the right of dower of the said Margaret Reed widow of the said John Reed, dec'd.

That the said James Alexander Reed departed this life intestate, on or about the tenth day of August 1850, under twenty-one years of age - having no child or descendants of a child, and never having been married - his heirs to whom this estate passed are his mother and brothers and sisters as alleged in said Bill of complaint. These defendants further admit that the said lands, town lots and real estate are held and owned by the said parties to said bill of complaint in the proportions and rights as stated in said bill.

These defendants deny that the homestead farm of the said John, deceased, was greatly out of repair at the time of the decease of the said John, and that the dwelling house situated thereon was very unsuitable as a residence for the said Margaret.

These defendants also deny, that the said Rowan with the knowledge, approbation and concurrence of his coparceners or either or any of them, erected on said homestead farm a new brick dwelling house at a cost of

75
about eight hundred dollars.

These defendants also deny that the said Rowan ~~with the knowledge~~ had about forty acres of ground, of which the said John did seize, cleared, fenced, and put into cultivation at a cost of about two hundred dollars.

These defendants also deny that the said Rowan had about three hundred rods of ditching done on said farm at a cost of about sixty dollars.

These defendants also deny that the said Rowan caused to be erected on the middle bottom Reed farm a double log cabin residence, at a cost of about fifty dollars.

These defendants state that the said John up to the time of his death resided upon the said homestead farm, and that ever since his death the said Margaret his widow has continued to reside thereon, and claims and has continuously claimed from that death of the said John up to this time, that she was entitled to the use and occupation and rents and profits of the said homestead farm as widow of the said John deceased, the dower of the said Margaret never having been assigned to her.

These defendants further answering say that they or either of them did not at any time consent

28520-42

10
that the said Bowman should move on to the said homestead form or that he should make any improvements thereon.

The said Bowman moved on to said form immediately after the death of the said John, against the wishes of the said Rebecca who was then sole and unmarried, and a minor and against the wish of Alexander Kirkpatrick her then guardian, and without the knowledge or consent of the said James Alexander Rhea who was then only about seven years of age, and without the knowledge or consent of Andrew McCallum then guardian for the said James Alexander Rhea.

These defendants further state that no repairs or improvements are needed upon said homestead form and that they or either of them never consulted to any improvements being put thereon nor were they or either of them or the said guardian of the said Rebecca consulted on the subject,

The defendants admit that a brick house was erected on said homestead form, which cost about five hundred dollars, but that the same was erected for the sole use and enjoyment of the said Margaret Rhea, and the said Stephen R. Bowman & his family but by whom the said house was erected, or whose expense the defendants have no knowledge, but they aver that it was built without

1030-17

7
their consent,

These defendants do not know of any land on said homestead farm having been cleared and fenced since the death of the said John, but if any such land was cleared and fenced since the death of the said John, they suppose it was done by the said Margaret or by some one else for her use and benefit. And they aver that they would on said land would more than pay for clearing and fencing the same.

These defendants or either of them have never had possession of the said homestead farm ~~for~~ any part thereof nor have they or either of them ever received one cent of rents or profits from said farm. But the said Rowan after the death of the said John, resided upon and used and occupied the said homestead farm from the 17th day of February A.D. 1847 up to the 17 day of February, A.D. 1852 and that the use and occupation of said farm for the period of time, ~~was~~ was of the annual value of from hundred dollars and that since the 17th day of February A.D. 1852 the said Rowan has used and cultivated and sowed and sown and cultivated about one hundred acres of said farm, which for that period is of the annual value of two hundred dollars for said use and cultivation

The defendants insist that the said Rowan for any improvements and repairs, that he may have

18 made upon said form, has no right to change
These defendants because improvements and
repair if any were made by said Rowan, were
made without the knowledge or consent of
these defendants, that said improvements
or repairs, were not necessary and are of no
use or benefit to these defendants, but were
made for the use benefit and convenience
of the said Margaret Reed, and said Rowan
and that said Rowan received profits from
said form more than enough to pay for all
improvements made by him thereon.

These defendants further insist
that if the said lands are to be changed with
any improvements made thereon by the said
Rowan, that the rents and profits of the
said form since the death of the said John
Reed should be applied to the payment
thereof and as the said Rowan and the said
Margaret Reed widow of the said John,
have received all the rents and masm-
uch as the said Margaret, widow of the
said John Reed deceased is entitled to
behave in the lands in controversy, and
that said House was knowingly built on
the homestead the defendants ins-
ist that the said Rowan must look to
the said Margaret for compensation for
said House and to the rents already
received by him as aforesaid

Joseph Bowles
Rebecca Bowles

Filed 9th Nov 1835 J. E. Hall clk

Answer of A McCallen & Wife

The Answer of ^{Andrew} J McCallin and Mary Ann
McCallin his wife to the bill of complaint of
Stephen R Bowman and Mary Ann Rowan
filed in this Court against John Reed Mar-
garet Reed, these defendants and others

These defendants saving and reserving &c
for answer of so much of said bill as they
are advised it is material or necessary for
them to answer unto, answering say

That true it is as alleged in said bill, that the
said John Reed Senior deceased was at the
time of his death seized in fee simple to him
and his heirs of all the lands, town lots and
real estate as described in said Bill of
Complaint, and that said lands, town lots
and real estate are lying and situated as
in said Bill is alleged, and being so seized
he the said John Reed Senior departed
this life on the day of February 1847
intestate leaving him surviving as his
only heirs at Law the said John Reed
Mary Ann Rowan and the others as alleged
in said Bill of Complaint to whom the
said lands, town lots, and real estate descended
in the proportions as set forth in said Bill
subject to the right of dower of the said Mar-
garet Reed, widow of the said John Reed de-
ceased.

20 That the said James Alexander Reed departed
this life intestate on or about the day of
As. 1850 under twenty one years of age,
leaving no child or descendants of a child
and never having been married, his heirs
to whom his estate passed are his Mother
and brothers and sisters as alleged in said
Bill of complaint, These defendants
further admit that the said lands, town
lots and real estate are held and owned by
the said parties to said Bill of Complaint
in the proportion and rights as stated
in said Bill

These defendants deny that the homestead
farm of the said John, deceased, was greatly
out of repair at the time of the death of
the said John and that the dwelling house
situated thereon was very unsuitable as a resi-
dence for the said Margaret

These defendants also deny that the said
Rowan with the knowledge approbation and
consent of his coparceners or either or
any of them, erected on said homestead farm
a fine brick dwelling house at a cost of about
eight hundred dollars

These defendants also deny that the said
Rowan had about forty acres of the ground of
which said John died seized cleared, fenced
and put into cultivation at a cost of about
two hundred dollars

These Defendants also deny that said Rowan had about three hundred rods of ditching done on said farm at a cost of about sixty dollars.

These Defendants also deny that said Rowan caused to be erected on the little Bottom Reed farm a double log cabin residence at a cost of about fifty dollars but they state that the said Andrew J. McCallen did some time in the year 1853 with the knowledge, concurrence and approbation of the said Rowan erect on said little Bottom Reed farm a double log cabin dwelling at an expense to him the said Andrew J. McCallen of about four hundred dollars.

These Defendants also state that the said John up to the time of his death resided upon the said homestead farm and that ever since his death the said Margaret his widow has continued to reside thereon, and claims and has continuously claimed from the death of said John up to this time, that she was entitled to the use and occupation and rents and profits of the said homestead farm as widow of the said John deceased, the dower of the said Margaret never having been assigned to her.

These Defendants further answering say, that they or either of them did not at any time consent that the said Rowan should move onto the said homestead farm, or that he should make any improvements thereon. That said Rowan moved onto said farm immediately after the death of said John against the wish of the Defendant,

22 and without the knowledge or consent of the
said James Alexander Reed,

These defendants further state that no repairs
or improvements were needed upon the said homestead
farm, and that they or either of them, never
consented to any improvements being put there
or nor were they or either of them consulted on the
subject.

These defendants admit that a brick house
was erected on said homestead farm, which
cost about five hundred dollars but they state
that the same was erected for the sole use
and convenience of the said Margaret Reed,
but by whom the said house was erected or
at whose expense these defendants have no
knowledge.

These defendants do not know of any lands
on said homestead farm, having been cleared
and fenced since the death of the said
John, but if any such land was cleared and
fenced since the death of the said John, they
suppose it was done by the said Margaret or
by some one else for her use and benefit.

These defendants or either of them, have never
had possession of the said homestead farm
or any part thereof, nor have they or either
of them ever received one cent of rents or
profits from said farm, but the said Rowan
after the death of the said John resided

23 upon and used and occupied the said
homestead farm, from the day of February
A.D. 1847, up to the day of February A.D. 1852,
and that the use and occupation of said
farm for that period of time was of the annual
value of four hundred dollars and that said
the day of February A.D. 1852, the said
Roman has used and cultivated, and still uses
and cultivates, about one hundred acres of
said farm which for that period is of the
annual value of Two hundred dollars for
said use and cultivation.

These defendants insist that the said Roman
for any improvements and repairs that he may
have made upon said farm has no right to
charge these defendants, because, such im-
provements if any were made by said Roman,
were made without the knowledge or consent
of these defendants, that said improvements
and repairs were not necessary, and are of no
use or benefit to these defendants, but were
made for the use benefit and convenience
of the said Margaret Reed.

These defendants further insist that if the
said lands are to be charged with any im-
provements made thereon by the said Roman
that the rents, and profits of the said farm
since the death of the said John Reed, should
be applied to the payment thereof.

Filed 9th Nov 1856

J. E. Hall Clerk

Replication to answers

In Gallatin Circuit Court

Stephen R Rowan &
Nancy Ann Rowanv
Chancery

Joseph Bowles &c

And the said Complainants
for Replication to the answer of Joseph
Bowles & wife, ^{and Andrew McCallen & wife} filed on the 9th November
1855, and to each of said answers,
say, that the matters and things contained
in their bill as aforesaid, are true
certain, and undisputed, and that
the statements in each of said
answers denying the allegations of
said bill, are ~~untrue~~ insufficient to
wherefore &c. S. R. Rowan

5

Notice to S. R. Rowan

State of Illinois Gallatin County ss

In the Circuit Court of said County
In the matter of an application for an
injunction aforesaid presented to the
Judge of said Court by Stephen R Rowan
and Nancy Ann Rowan his wife Complainants
against Margaret Reid, John Reid Jr.
Joseph Bowles and Rebecca Bowles his wife
and Andrew McCallen and Mary Ann
McCallen his wife, Josephine McCallen,
Mary McCallen, and Andrew J. McCallen
the said Rowan is hereby notified, that

on the Third Monday of November 1855 between
ten o'clock a.m. and five o'clock P.M., the
said defendants Joseph Bowler and Rebecca
Bowler his wife, and Andrew McCallen
and Mary Ann McCallen his wife, at
the room occupied by the Supreme
Court in Mount Vernon Illinois,
will present their answers in this
cause to the Judge of said Circuit Court
denying the allegations of the Bill in
respect to any consent or agreement
on their part, to the building of the Brick
House and making improvements upon
the lands of John Reid Senior deceased, for
which Compensation is claimed in said
Bill, and denying also the statements
in said Bill intended to show, that
said Complainant is entitled to
Contribution from the Heirs of said
John Reid for the cost of said improve-
ment.

The said defendants will also
produce affidavits with their
answers showing that several of said
defendants were infants at the time
said alleged improvements were made
and also showing that said Complainant
occupied the brick dwelling several
years without the payment of
rents, and that said dwelling was
put up for the accommodation and use
of said Complainant and defendant
Margarette Reid widow of John Reid

And also that said Brick House was placed upon the Homestead of said John Reid, and that the said Margaret Reid, who with said Complainant has had the benefit of the same, has had the rents and profits of a farm of 200 acres free of rents as the Homestead of her said husband, ever since 1847, whereas if dower had been assigned to her, she would not have been entitled to more than 70 acres of improved land.

Shanneton November 6th 1855, To S Bowles

Andrew McCallen by
Olney -

I Served the within notice on Stephen R Rowan, by handing to him a true copy thereof this the 7th November 1855,

Same, Davenport Shff Co, Ia
By James Bradford Deputy Sheriff

Affidavit of A R Stout -

State of Illinois Gallatin County, ss
 Aaron R Stout. being first duly
 sworn States on oath that he resides
 and has resided in Shawneetown for the
 last sixteen years that he was personally
 acquainted with John Reid Senior deceased
 who died about February 1847 That at the
 time of his death he resided about two
 miles from Shawneetown where he had
 resided ever since affiant moved to
 this County. There was cleared and in
 Cultivation at the time of the death of
 the said John Reid about one hundred
 and Eighty five Acres of land on said
 farm where said Reid resided and on
 adjoining fields That the use and Ocu=
 pation of said farm annually since the
 death of the said John Reid Senior has
 been reasonably worth twelve bushels of
 Corn to the acre, and the average value
 and price of Corn on said farm since
 the death of the said John up to the
 present time is about twenty five cents
 per bushel

affiant further States that he was employed
 by said Stephen R. Roman to erect a brick
 house on said farm and that he did do the
 brick work of said house and that the
 brick work and the materials for the
 brick work was worth about three

430
hundred dollars that the cost of the entire house would not exceed six hundred dollars, That after said house was built said Rowan moved into it and resided therein about three years and some of that time cultivated a part of said farm, and that since he moved into said house he has cultivated more or less of said farm each year up to the present time . . .

Affiant further states that said Rowan had cut about eighteen oak trees and made posts of them for twenty four acres of land of his own that oak trees were worth one dollar and fifty cents each, Affiant does not know that said trees were cut on the land belonging to the estate of said Reid but supposed they were because said Rowan told affiant he was getting some posts for his fence off the Reid land Affirmed to before Aaron R. Stout me this 8 November 1855

J. E. Hall clk

State of New York Lattin County
 James Keasly being first duly Sworn
 states on oath that he resides and has re-
 sided continuously in this County within
 three quarters of a mile of the dwelling house
 of the Home farm of John Reed Senior deceased
 ever since the Summer of 1847 That Mrs
 Morgant Reed widow of the said John
 Reed deceased has resided upon said
 Home farm ever since the death of
 her said husband that at the time of
 the death of the said John Reed there
 was cleared and in cultivation about
 One hundred and Eighty five acres
 including the dwelling house that
 there was in 1847 and is yet a good
 orchard of about ten acres principally
 apple trees that a fair rent for said
 One hundred and Eighty five acres would
 have been twelve bushels of Corn to the
 acre each year since the death of
 the said John Reed and that a fair
 average of the price of Corn in the
 ear on that farm since the fall of
 1847 is twenty five cents per bushel
 that thirty acres of the 185 acres Stephen
 R. Rowan cultivated for three years
 being the years 1849 1850 & 1851 other
 thirty acres of said 185 acres was

cultivated by said Rowan for two years
 being 1854 & 1855 and other five acres
 of said 185 acres said Rowan cultivated
 for six years and rented the same five
 acres to one Overton for one year and
 Overton paid him Rowan the rent for that
 year the six years here spoken of
 and the one year to Overton was all
 since said John Rice died that the
 said two fields of thirty acres each
 cultivated by said Rowan as aforesaid
 and the five acres cultivated and
 rented by said Rowan by said Rowan
 as aforesaid was reasonably worth
 twelve bushels of Corn per acre for
 each year the same was so cultivated
 and rented and that Corn in the
 ear on said places during such
 times was worth twenty five cents
 per bushel Mrs Rice the widow of
 said John Rice deceased and John
 Rice Jr together have cultivated
 twenty acres of said 185 acres for
 eight years since the death of the said
 John Rice and other twenty acres
 of said 185 acres for nine years
 being ever since the death of the said
 John and other four acres of the
 185 acres for nine years being ever

since the death of the said John other
 five acres of the said 183 acres for one
 year being the year 1835 that the
 said lands so cultivated by the said
 Mrs Reid and John Reid was worth
 for rent during the time so cultivated
 by them twelve bushels of Corn to the
 acre that the remainder of the
 said 188 acres have been rented
 to different persons every year since
 the death of the said John Reid Senior
 by the said Margaret Reid principally
 and some by said Howard that the
 different tenants who have so rented the
 the said remainder of said 188 acres
 are William Blackford Miles T
 Devers Thomas Devers James Brady
 Charles Palmer Robert Tillinton
 Samuel Dyra Henry And
 James Child Daniel Winsall
 Mrs Elizabeth Winsall George
 Overton Henry Worlds & Andrew
 Smith

Affiant also states that said
 Horan Cleona about 10 or 12 acres
 of woodland adjoining said 188 acres
 and about two miles from the centre
 of Shawmut that a great deal of
 the wood cut off said 10 or 12 acres of

Said Said Rowan had brought to
Shawmutown and sold the principal
part - and made the balance that the
timber on said land was well worth
the labor and expense of clearing
the same that Offiant offered to said
Rowan to clear the said land for
the wood and Rowan refused saying
that Mr Bowles had been cutting
up about the land and he would
not give any body leave to cut
any wood on said land but himself

Offiant further states that said
Rowan and his family resided on the
said homestead in the house with
Mrs Reid in 1847 and until the
brick house was built about five
to ten feet from the old dwelling
house and then said Rowan and
his family moved into the said brick
house and continued to reside
therein about four years the said
Margaret Reid continuing to reside
in the said old dwelling house until
said Rowan moved out of the brick
house when she moved into it.

That while said Rowan resided on
said farm he cleared out a third of
branch on said farm and changed

The direction of the water on the land he then Cultivated and that the ditch so cut by said Rowan is now of no value to said farm.

Affiant also states that he two or three times heard said Rowan say that the old Doctor had been living in the old house a long time and that it was not fit for the old lady to live in that he intended to build a house purposely for the old lady Mrs Reid to live in and if the heirs did not help pay for it they could go to Hell.

his
James X Beasley
monr

James Beasley being duly sworn states on oath that the matters and things stated in the foregoing affidavit are true to the best of his knowledge and belief Subscribed and Sworn to before me on this 7th day of November 1856

Milton Bortley (JP)

State of Illinois 388
 Gallatin County 388

Alexander Hillpatrick being
 first duly sworn states on oath that
 he was the guardian for Rebecca
 now Rebecca Bowler that said Rebecca
 resided with affiant at the time of
 the death of John Reid Senior and for
 about three years after wores that affiant
 was not consulted about building
 a brick house on the old Reid farm
 home farm nor did he give consent
 that a house should be built thereon
 And he is confident that said Rebecca
 did not consent that any house
 should be built on said farm Had
 she have been consulted on that subject
 or had she given her consent there to
 affiant would know it.

Affiant also states that he and said Rebecca
 were opposed to Stephen R. Rowan moving
 on said farm and to his cultivating
 any part of it or exercising any acts
 of ownership or control over said
 home farm

Alex Hillpatrick

Subscribed and sworn to before me
 on this the 7th day of November
 A.D. 1855

William G. Bowman J.P.

State of Illinois Gallatin County ss
 In the Circuit Court of said County
 Stephen H. Rowan }
 Nancy Ann Rowan } In Chancery Motion
 against } for Disjunction
 Joseph Bowles, Rebecca }
 Bowles his wife & theirs }

Alexander K. Whitlock being sworn
 States that he is and has been for many
 years well acquainted with the children
 and grandchildren of John Bird Senior
 who died in 1847. The above named
 Rebecca Bowles is a grandchild she
 was born in the year 1829 as deponent
 is informed by her mother and which
 information he believes to be correct
 he having acted as guardian for said
 Rebecca during her minority. He
 further states that James A. Bird a
 grand son of said John Bird died several
 years ago under twenty one years of
 age. He further states that Josephine
 McCallen Andrew J. McCallen and
 Mary McCallen are all under twenty
 one years of age neither of them are
 over fifteen years old but their
 precise ages he cannot state.

Subscribed and sworn to before me Alex. K. Whitlock
 on this 29th day of October 1836
 A. Redman JP

Filed 30th Oct 1836

J. E. Hall clk

Affidavit of Henry Gill!

State of Missouri, Gallatin County ss
 Henry Gill being first duly sworn deposes
 and says that he was raised in Gallatin
 County and resided within $\frac{3}{4}$ th of a
 mile of Doctor John Reed for a period of
 20 years next before his death that during
 a great portion of that time he worked
 more or less upon his farm known as
 this time as the homestead farm at
 which the said John Reed resided
 next before his death in February 1847
 and which has been occupied by his
 widow ever since up to this time
 That at the time of the death of
 the said Dr John Reed the dwelling
 house was in a wretched state of repair
 the cellar which had been walled
 with wooden picket timber which
 was in a state of decay from which
 there arose through the decayed floor
 an offensive effluvia which was offen-
 sive and sickening to any one who
 was not accustomed to it half
 of the building being an addition
 was much decayed and liable to
 fall at any time so much so that
 this affiant would not have thought
 it consulting economy to have repaired
 it this affiant will state that
 J. N. Rowan one of the heirs at law
 moved to the said premises and

37 Shortly after perhaps in 1848 Commenced
erecting a brick dwelling which he did
erect 44 by 18 or 19 feet wide with an 8
foot hall through making 2 Comfortable
rooms and a hall Said house was
lath and plastered down as this affiant
believes 4 panel doors & 6 15 light
windows This affiant is of opinion
that said house could not have
been built at the time for less than
Eight hundred dollars and is of
opinion enhanced the value of
the premises upon which it was erected
to that amount - This affiant further
states that the said S. R. Rowan
built on said premises a cornet
shed on each side which was ne-
cessary and worth about seventy
five dollars he also threw up a
levy by means of a ditch in the
orchard which conducted the
water from the different branches
and hollows above to a point opposite
the lower part of the bottom field
from thence through said field
passing through Cotton wood Swamp
in the center of said farm which
was abandoned by the said Reed
on his lifetime and suffered to
grow up in cotton wood and other
timber some of which was 60 feet
high This affiant is of opinion

That the ditching was perhappse
 the most-esential improvement
 for the outlay that was done upon
 the farm. This ditch prevents the
 soil from washing in various di-
 rections off the farm and should have
 been made long before it was. This ~~is~~ ^{is} of opinion from a knowledge of
 the damage done to the crops in
 Reids lifetime by the water rushing
 through the field in different
 directions taking corn and
 soil all together and sometimes
 covering up the corn when it had
 grown waist-high. This affiant
 therefore has no hesitation in
 saying that the ditching was
 worth 20 cents per rod and to
 the premises through it was made
worth more than the cost and
 is at this time in case of rains
 as in former years to portions of
 the farm indispensible there is
perhappse a mile in all. Mr. Rowan
 has cleared a good deal of land this
 affiant cannot say how much.
 There was not however at the
 time of Reids death more than
 120 acres of land cleared upon the
 farmstead farm. I always understood
 he cultivated it as tenant and paid
 the rent to the widow he frequently

39 I am as the agent or atty and
attended to the collection of rents
for the said Margaret Reid

This affiant knows of the said
Rover making and causing
to be made other improvements
on the estate of the said Dr John
Reid outside of the Homestead the
extent of which or the value
this affiant cannot at this time
state and further this affiant
says the not -

Henry Gill
Subscribed and sworn
to before me on this
28th day of November
A D 1836
William G. Bowman (J D)

Affidavit of H. H. Thomason

State of Illinois 388
Gallatin County 388

I H. H. Thomason being duly
sworn state that I worked for Dr
John Reid upon the homestead farm
for twenty years before his death more
or less nearly every year from 1827 up
to the time of his death and have a
correct knowledge of the quality and
quantity of cleared lands upon the said

homestead form and fully concur with
 the above statement of Henry Gil except
 I do not think there were more
 than 120 acres of titable land
 owned on the homestead form at
 the time of the death of the said
 John Reid deceased In all other
 respects I fully concur with
 the above statement.

Subscribed and sworn ^{more} to before me this 28th
 day of October ~~18~~ 1856
 (M^{rs} L. Bowman) (J. P.)

Affidavit of Margarett Reid

State of Illinois Gallatin County, 29th Oct 1856
 Margarett Reid being duly sworn deposes
 and says she is the widow of ^{Doget} John Reid
 died, who departed this life on or about
 the 6th of February AD 1847. That she has
 resided upon the farm on which her
 said husband last resided before his
 death, from thence to the present time
 never having been absent except
 upon a visit to her daughter, and
 only a day or two at a time.
 This affiant will state that at the time
 of the death of her said husband
 the dwelling house was in a state
 of decay, so much so that half of
 said building was in danger of falling
 at the time of the death of the said
 John Reid. That he her said husband
 talked about it, and spoke of
 leaving the homestead farm and
 building upon an other farm, with
 a view of getting off the road and
 living private. That he had rented
 the place except the meadow for the year
 1847 with the view of building a house
 upon the house upon the homestead, or
 an other farm, he had not fully deter-
 mined at the time he was taken with
 his death sickness

this affiant will further state that shortly
 after the death of her said husband

42¹⁰ S R Rowan and family moved to the
home stead farm at the request of this
deft and her son John that Mr Rowan
repaired the Old House by blocking up
portions of it plastering portions and
and putting on a new Clabrod Roof he
Mr Rowan in 1848 Built a comfortable
One Story brick dwelling with 2 Rooms
Chimney at each end and hall through
the Center and and delivered the said
house up to me, the Old house being con-
sidered no longer either safe or comfortable
and I am at this time residing in the
brick house this affiant further states
that She was advised by legal Counsel
that She as Widow in right of her
Husband was entitled to the whole of
the home stead farm from the time
of the death of her said husband until
her dower was ascertained according to
law She has therefore claimed and con-
trolled the homestead farm from the
year 1847 up to this time there being
at the time of the death of her said
husband about 105 or six acres of Tilable
Land and some woods prater In all
under fence only about 123 acres, and
the fence Round said premises in a very
bad State of Repair She can only know
the facts before Stated from conversations
with her said husband and the amount
of repairs that was required after his
death in order to put the premises in a

Mr D McMoran Cultivated portions of said premises but as Tenant under this affiant except where he cleared up and put in addition she charged no rent.

This affiant has claimed and will claim all the rents arising from the home stead farm until her dower is legally set apart to her according to Law She further States Considering the repairs she has been compelled to make from year to year to keep up said premises it has ~~been~~ furnished her a Support She further States That she is blind and has been for the last 23 years so that she has at no time been able to tell by the organ of sight Midnight from noon day and further this defendant says &c NOT,

Sworn to and Subscribed
before me This 30th day
of October 1856

Margarett ^{her} + Reid
mark

W. J. Boyd

JP

Filed 30th October 1856

J. E. Hall clerk

Order of Court.

Saturday 1st November 1856

Stephen R Rowan &

Nancy Ann Rowan his wife }

Against }

Andrew McCallen, Joseph }

Bowles & others - }

In Chancery.

The Motion submitted at the October Term 1855 of this Court for an Injunction on behalf of the Complainants, and not decided, is now submitted to the Court for decision upon the bill answers of Defendants Joseph Bowles & wife and Andrew McCallen and wife, with replications thereto, the affidavits of Aaron R Stodd Alexander Kirkpatrick, and James Beasley, taken by Defendants with notice to Complainants Rowan of the intention to take and use affidavits on the hearing of said Motion, also the affidavits of Henry Gill & H H. Thomason and Margarette Rind taken by Complainants. And the Court being now sufficiently advised of and concerning the premises, does hereby order that that the Motion aforesaid be and the same is, hereby overruled - And the Court further orders that the bill be dismissed at the Complainants Cost, Whereupon on the prayer of the Complainants, an appeal is allowed.

them from this decree to the Supreme Court
 which appeal the defendants consent
 may be prosecuted without the
 execution of any appeal bond, and
 the defendants further consents, that the
 appeal and Cause shall stand for
 hearing at the ensuing November Term
 of the Supreme Court at Mount Vernon
 as though thirty days had intervened
 between the time of making the appeal
 and the sitting of said Court,

The affidavits and notices used on the
 motions for injunction to constitute
 part of the Record herein, and be
 considered as depositions - The defendants
 further agree that the Reversal of this
 decree, shall operate as an injunction
 according to the prayer of the bill,
 and the proceedings in the proceeding
 at law to be stayed until the further
 order of the Court herein -

State of Illinois
Gallatin County } set

A. M. Hamilton
Clerk of the Circuit Court in and
for said County, duly appointed
and qualified as such do certify
that the foregoing 45 pages hereto
attached contain a true and perfect copy
of all the files and Records of a certain
suit in said Court wherein Stephen R.
Rowan and wife are complainants and
John Reid Jr. and others are defendants,
as appears from the files & Records of
said Court

Given under my hand
and the Seal of said Court
at office in Shawneetown this
17th day of November 1856,
A. M. Hamilton Clerk

I A. M. Hamilton, Clerk of the Circuit
Court of Gallatin County Illinois, do
certify that the fee for making out
and certifying the attached Record is
\$7.00 . . . Given under my hand this
the date above written
A. M. Hamilton Clerk

47

Stephen M. Brown &
 Nancy his wife *appellants*
 vs
 John Reed Lin *appeal from Gallatin*
 Joseph Boules & wife
 and others — *appellees*

In the Supreme Court
 of the State of Illinois for the 1st
 Grand Division held at Mt Vernon
 Nov term 1857

Came this day the appellants
 by Nelson & Johnson their attorneys
 and say that in the record & pro-
 ceedings and process aforesaid
 there is manifest error in this
 that the Circuit Court of Gallatin
 County aforesaid rendered a decree
 as in said record set forth in
 favor of the appellees whereas
 by the Law of the land the said
 Decree ought to have been rendered
 by said Circuit Court in favor of appellants
 and this they are ready to verify &
 and for assigning errors specially
 on the record aforesaid the appellants
 aver that the said Circuit Court
 of Gallatin County erred in this first
 that the said Court overruled the Motion
 of Complainants for an injunction
 against the appellees as in and by
 their Bill prayed for and secondly
 that the said Circuit Court erred in
 dismissing Comps^{ts} Bill at their costs & thirdly
 the said Circuit Court erred in

overruling said Compt^{ts} Motion
for an injunction & dismissing their
said Bill at their Costs, & in not granting
the relief prayed. Whereupon the said appellants
say that for the errors aforesaid
apparent in the record & proceedings
upon the 1st Judgment and Decree
of the said Circuit Court of Fulton
County ought to be reversed.

Wetson & Johnson for

appellants;

And the said Appellees by W. Thomas
say that there are ^{such} no errors
in the Record as are complained
of.

W. Thomas
for Repts.

No 32

Stephen R Rowan
d. Nancy Ann Rowan
his wife

Joseph Bowles and
Rebecca Bowles his
wife, Andrew ~~L~~
McCallen and wife -

A. L. McCallen, Mary
McCallen - Joseph
McCallen and
John Reed Jr

June 19. Apr 1857

A. Schuster M

Ordered

W. Thomas for Defts,

1. before the facts stated in the bill the complainants were entitled to decree against the heirs for the sale of the Real Estate, Vansyckle vs Richardson 13 Dec 1874.
2. That the Statute requiring claimants to be instituted within two years do, also not operate to bar Kindred's rights as against the heirs, - ^{Reynolds vs Jones.} ~~from~~ 15 Dec 1871.
3. before the hearing of the cause, the ~~fact~~ the Enquiry are -
~~Enquiry, what has become of the~~
~~former estate, that being the first~~
~~direct inquiry of the court;~~
First, How much is the complainant entitled to as against the estate,
~~which is answered by the heirs~~
2nd ~~If a person entitled to an interest in~~
~~the land of the decedent, that is the~~
~~fact~~
Second, ~~What assets remain in the~~
hands of the Administrator applicable to the payment of the claims,
and to settle this question the accounts of the Administrator are necessarily brought before the court, -
3rd Story Equity pleading page 219.
Sections ~~172~~ 172 and

Expos the court, had exposed the statement of
account to mistake, from Exemption taken
to his finding same false?

Thirdly, upon the investigation of the account,
if the court finds assets in the hands
of the Administrator, he is required to
pay, before resorting to the real estate,
Stog's Equity pleading page 129. Section 100.
in note, -

Fourthly, ^{In} ~~what~~ a case of this character, the
Court, must necessarily ascertain
the state of the Administrator's account,
and unless there is a want of assets to
pay, the sale of Real estate is not
decided, and the account may be made
upon statements in the account, or
upon the evidence, without reference
to the allegations in the bill,
Adams Equity Toss page 580. to 584. 589.
Stog's Equity pleading Toss page 129. Section 100, in note.

Fifthly, In this case the court found that the
whole of the personal estate had been
Exhausted, - but that \$935. $\frac{21}{100}$ had
been paid out on claims of the 4th
class, which should have been paid
to complete on their 3rd class claims,

Sixthly,

the ~~complainant~~ first Appellant of
error, complaining that of the finding
of the court, that Horrocks paid 4th class
claims after filing bill & saying of
1880 says. forms no ground of ^{Reversal} ~~error~~,

because, though this finding may not be sustained by the evidence, yet the evidence in fact proves conclusively that the payments were made after Rowan had notice of the claims, — see Rowan's return page 26 of Record. —

Seventh; — In answer to the bill, Rowan should have exhibited an account of his Administration, showing what he had received & the disbursement thereof, — but failing to render such an account, the Court found the Testimony, and stated the account as it should have been stated, — Rowan does not allege in his answer any settlement of his accounts, or rely upon any action of the County Court, but if he had made a settlement pending the former or present suit, it would avail him nothing
See 5 Dennis 44. & 529.

Dona

8. upon the question of the right of the Circuit Court, to make the removal of questions, and subsequently to decide upon those questions

See on Equity Topo page 812 & cases there cited.
Daniels chy 1192. 6 Dana 390. 391. Barlow chy Pract 332.

Rovans account as errors will
be found at page 97 to 101.

page 99 Dr Side \$ 1468.91

page 101 Cr Side 1420.59.

balance for correction 47.72

Rovans answer and as witness
of knowledge of claim page 89.

The first charges agst Rovans in
his account are dated in 1843.

2nd 1846 3rd 1850.

1 Credit 1843 2nd do 1850. See account

Rovans

Dr
Rovans

Dr 13.

larger Brief

Stephen R. Browne

against Judgment of
November Term 1858

Joseph Bowler Wife

vs
Alexander Kirkpatrick Wife

The defendants Joseph Bowler
Wife & W. H. Hume enter their
motion for an order directing
a Partition of costs in this
case, and file a notice to
~~show~~ The plaintiffs in error
of the intention to make said motion.

73 Original lices filed 3 March 1844.

81 Rowans answer of 29 Oct 1844

86 Rowans answer of 6 August 1850

91 Rowans answer of 13 October 1851

135 Notice to Take depositions of Hull

136. Depositions of Pong near road,
with a list of accounts,

159 Notice to Take depositions

160 Account as above,

The defendants should be required to
pay for printing the following parts
of the abstract.

1 The matter on 1 page, and to the
words "Rowans filed answer" on 2 pages,
of printed abstract,

2 The matter on last page of printed
abstract, beginning with the words
"At the May Term 1857."

For the rest of said abstract debts
ought not to pay.

W. Rowans
for Rowans

no 52

Roman

7

Brother de

motion to return

cont.

Specification

for Roman

In Supreme Court. Novr 1857.

Stephen R. Rowan vs

vs Chy. Appeal from Gallatin.

Andrus McCallen &

McCallen & others filed their petition
for partition against Appellants &c.

Rowan presented his Bill in Chancery
to Enjoin the proceeding, and secure
partition in Chancery, — alleging
that he had made valuable improve-
ments, & praying compensation, on
that ^{the land on which} his improvements, now made
might be set off to him, without
valuing the improvements.

The Questions are.

1. As to the right to injunction
2. As to the right of Rowan to
compensation as upon the facts
presented by the Record.

McCallen & wife answered the bill
denying the allegations, — and stating
that Rowan Built the House &c for
the use of the Widow, and then
occupied it himself several years,
that the use of the House, and lands
cultivated by Rowan, was worth
Enough to compensate for expenditure.

Brooks & wife answer, & say, That The Building of The House was not Necessary To The Occupations of The Homestead.

2 That Mrs Brooks was ~~and~~ an infant When Improvements were made, and gave no consent or authority.

3 That they have never received any rents, or profits from the estate,

4. That The House was not built with any view, to the benefit or use of the heirs, but for the benefit of The Widow & Browne,

5 That Browne & his family lived on the Homestead from 1847 to 1852 and Occupied the Brick House from the time it was erected in 1848 to 1852.

6. That the Widow and Browne have enjoyed the benefit of the Homestead farms & House, and that Browne's care & labor has been worth as much as the value of Improvements.

7. That Browne has sold & sold timber up for more of the value of \$

8. That the Wood taken from The Land cleared was worth the clearing.

9. That the rent of the Homestead was worth \$1200 per annum.

10. It is stated in both answers, that
Rowan cultivated 100 Acres of The
Homestead farm from 1852 to The
time of filing the answer, worth \$200
per annum. —

page 28 The Testimony shows the following facts.
of Rowan? ^{Testimony for Defendant.}
1 Answer R. Stone says, that when John
Price Sr. died in 1847, there was cleared
and ⁱⁿ cultivation about 185 Acres
on the farm, when said Price resided
and the adjoining fields, that the use
of the farm has been worth 12 Bushels
of corn per Acre, & corn worth 25 cts
per Bushel, — He was employed by
S. R. Rowan to erect a Brick House
on the Homestead, which he did,
the Brick work & materials were
worth about \$300 — the cost of the
entire house would not exceed \$600.
Rowan moved into the house, and
resided therein about 3 years,
and has cultivated now or less
of the farm any year.
Rowan cut 18 Oak Trees worth \$1.50 each,
and made posts for enclosing his
own land. —

page 29 James Beasley states that when John Price
of Penn. died, there was about 195 Acres of cleared
Land included in the Homestead.

that Margaret Price the Widow has
resided therein ever since the death of
said John. & that the annual rent
has been worth 12 Bushels of Corn
per acre, & the corn worth 25 cents.

Brown cultivated 30 Acres in 1849. 50
& 51. and other 30 Acres in 1854 & 55.

He cultivated 5 Acres for 6 years,
and rented the same 5 Acres 1 year,
that this Land so cultivated was
worth 12 Bushels corn per acre, & the
corn worth 25 cents.

that Brown cleared 10 or 12 Acres
which Wilcox offered to clear for the
Wood & Timber, but Brown refused to allow
it - & so they principally built & used balances
that Brown and his family resided
in the House with Mrs Price, until
the Brick House was finished,
when they removed into that, and
resided therein about four years.
Mrs Price continuing to reside in
the old House, until Brown
removed from the place, when she
went into the Brick House, -
that Brown cleared out a Branch

passing through the fence, so as
to change its direction, by cutting
a ditch, which is now of no value,
In conversation, Rowan, on more
than one occasion, said that the old
house had lived in the house long enough,
that it was not fit for the old
lady to live in, and he intended to
build a house purposely for
Mrs Price to live in, -

page 34. Alexander Birnie states
that he was the Guardian for Rebecca
Borles, when her Grandfather, John
Price, died, and so continued for 3
years afterwards, that he was never
consulted about building a brick
house by S. R. Rowan, nor did he
ever give consent to such building.
that he, & said Rebecca was opposed
to Rowan moving on the fence
or cultivating it, -

said Witness also knows the infancy
35. of Mrs McCullens children

Testimony of compact.

page 36 : Henry Gill, was acquainted with the Hornstead farms &c. When John Rindardine, the dwelling house was in a wretched state of Repair. The cellar had been walled with Picket Timber, which had decayed, & from which, arose through the decayed floor an offensive effluvia, which was offensive & sickening, - half the Building was much decayed, and liable to fall, and was therefore dangerous. S^r Rowan moved to the premises, and shortly after, perhaps in 1848 commenced Building a Brick dwelling 44.5 18 or 19 with a Hall 8 feet, making two comfortable rooms & Hall, the House was built of stone, - Had 4 panelled doors, & 6 15 light Windows, Witeup is of opinion that the House cost 800^{ff} and estimates the value of the premises at that amount.

Rowan built a Barn & Shed worth 75^{ff}, threw up a Levee by means of a ditch in the orchard, which conducted the water through the farms.

This Ditching was perhaps the most expensive improvement for the outlay.

that was made on the fence. Worth
20 cents per Rod

Rowan has cleared a good deal of
land, cannot say how much,
When John Price died, there was
not more than 120 Acres cleared
land, fit for cultivation,
Rowan cultivated from time to
time portions of the Hornstead
but Wilks understood that his
cultivation as tenant & price
went to the Widow. he frequently
acted as the agent or Attorney and
collected Rents,
Rowan made other improvements
outside of the Hornstead, but the
extent or value, not known to Wilks.

39. H. H. Thomas says ~~that~~
that he concurs in opinion with
Gill,

41. Margaret Price Widow of John Price
She states that ~~when~~ When John Price
died, the dwelling house was in a
state of decay, - shortly after the death
of her husband, S. P. Rowan and family
moved to the Hornstead at her request

and her son John, - Rowan repaired
the old House, & Blocking up portions
of it, plastering portions of it, &
putting on a new clapboard Roof,
In 1848 he Built a comfortable
one story Brick dwelling, with two
Rooms, Chimney at each end, & Hall
through the center, and divided the
House up to her, &

she had been advised by legal Counsel,
that she was entitled to possession of the
Homestead until her dower is
assigned, She has therefore claimed
and controlled the Homestead from
the year 1847 to this time. - at the
time of the death of her husband, there
were about 123 Acres of land
enclosed, 105 or 6 Tillable, -

Rowan has cultivated portions of
said Homestead as Tenant under her
except where he cleared up, and
put in Addition she charged no rents,
she has claimed, and will claim
all the rents arising from the
Homestead until her dower is
legally set off to her,

She states, that considering the expenses
she has been compelled to make

from year to year. the mites have
barely furnished her with a support.
She is Blind, and has been, for 23
years, and unable to tell, of the
organs of Sight, Mid night from
Noon day. —

The Bill shows, that John Price Sr died
Seized of a number of Tracts of Land
containing in the aggregate over 2000
Acres, and several Town Lots in
Shrewsbury.

The objections to granting any relief
was. 1. That the Complainant does
not ~~show~~ describe by Numbers or
otherwise, the Lots of Land, on which
the alleged improvements were made,
nor of what Tracts the Homestead
was composed.

2. The Bill shows, that the Improvements
were made upon Lands, of which
no one of the Coparceners was in
possession, ~~and~~ or was entitled to possession
or to rents or profits, -

3. The Complainant does not pretend
that he made the Improvements
by mistake of Law or fact, or upon
the belief that he had right or title
to the Lands.

4. The Bill does show, that complt
made the Improvements upon that
part of the ~~estate~~ Lands, of which
the Widow had rightful possession,
and was entitled to rents & profits
during her life.

The evidence in the case shows.

1. That the Homestead consisted of about 195 Acres of Improved Land. but the Tracts, or Lots, on which the Improvement is situated, are not described by their numbers.
2. That immediately after the death of John Brick^{in 1847}, Rowan, with his family, removed into the dwelling House and lived with the Widow, until the Brick House was completed, where he and his family removed into that, and Mrs. Reed, remained in the old House, ~~from~~^{out} until Rowan removed, in 1852.
3. That the Purpose for building the House was, that the old house was not suitable for the residence of the Widow, and not that said house was necessary to the ^{uses or} cultivation of the farm, -
4. That after building the House Rowan and his family occupied it four years, during which time Mrs. Reed occupied the old House.
5. ^{The} That the use of the Homestead farm was worth about \$550 per annum.

6. That Rowan cultivated parts of the said Kinnisburgh farm for several years.
7. That Rowan started before he built the Brick House, that he intended to build it for the Widow.-
8. That said Brick House did not cost exceeding \$600.
9. That Rebecca Bowler, and the heirs of Alexander Price, except Mrs McCallum, were all infants at the time the House was built.-
10. That no one of the coparceners has derived any benefit from the Improvement by the receipt of rents or profits.-
11. The evidence fails to show, that Rowan paid any rent for the House or land occupied and used by him, - or that he occupied as the farmer, or Tenant of the other coparceners, or for their benefit, or with their consent,

The case of *Louvalle v. Munn* is *Munn v. Louvalle*
2 Gilman 39.5. *Settle the Question*, That
in a proceeding in Chancery over
Estimate will be ~~settled~~ allowed, The
benefit of improvement, in the class
of cases therein referred to, -
In *Horn v. Goring* 13 Ill. R. 95
The Court declined deciding The
Question, but remanded the cause
for further proceedings &c

The case before the Court is
distinguishable from either of the
forgoing cases, -

Now the Party claims compensation
1 upon the ground of making The
Improvement with the consent and
concurrence of all the parties
2. That The Improvement adds
to the value of the estate

Whereas, The ~~facts~~ evidence, and
evidence shows, that no concurrence
or consent could have been given,
and all the Equity of the bill is
denied,

The Circuit Court, might have dismissed the bill, ~~for~~ because of the failure of counsel to prepare the case for hearing, - ~~It was~~ 12 months expired after filing the bill, before it was dismissed, and counsel had not taken out process against the infant defendants, nor had he taken any testimony to sustain the bill, -

In most of the cases referred to in
the Books, ~~some~~ Equitable claims
= ~~between~~ and ~~status~~, showing right to
compensation, beyond the bare
fact of making improvements,
here the improvements are ~~confessedly~~
made for the use of the Widow,
and the evidence shows fully
that complete has derived benefit
from the use of the property
equal to the cost of the
improvements,

The following cases are referred to as showing the rules adopted in other courts,

The case of *Louvalle v. Munn* is *Munn v. Louvalle* 2 Gilman 39. Settles the Question, That in a proceeding in Chancery over Estomant will be ~~settled~~ allowed, The benefit of Imprisonment, in the class of cases therein referred to, -
In *Storrey v. Goings* 13 Ill. R. 95 the Court declined deciding the Question, but remanded the cause for further proceedings &c

The case before the Court is distinguishable from either of the foregoing cases, -

Now the Party claims compensation & upon the ground of making the Imprisonment with the consent and concurrence of all the parties
2. That the Imprisonment adds to the value of the estate

Whereas, the ~~facts~~ answers, and evidence shews, that no concurrence or consent could have been given, and all the Equity of the bill is denied,

Crest v. Jach 3 Watts 238.

Tenant in Common Went into possession and made improvements by permission of some of the Tenants, - Cannot recover compensation

Graham's Case v. Graham & Moore 562
Compensation to Tenant for improvements and ameliorations, so as to make Coparceners debtors, refused; He is charged with rents, and allowed to retain, to the extent of improvements, and required to pay balance, if any, but in no case is an allowance for improvements to be allowed.

Thurston v. Dickinson 2 Richardson Eq. 317.

If one of several Tenants in Common, makes improvements on the Common property, neither the property, nor his Cotenants, are chargeable with its value.

3 Bouvier Inst. 312 Same as above.

Teal v. Woodworth 3 Paige 474.

A purchaser in good faith, entitled to have his improvements included in partition.

Town v. Medhams same Book 353.

A person in possession, supposing himself legally entitled to the whole, erects valuable Buildings. Thereon, will be entitled to the benefit of his improvements.

Green v Putnam 1 Barbou 510.

The Rule ~~is~~ in case improvements
are made on lands, during the existence
of a life estate, —

Coulton v Coulton 3 Sandford Ch R 67. 68.

Improvements made in good faith to
be paid for or allowed to party.

Swann v Swann (8 Price 518. 522.) English
~~Swann v Swann~~ Exchequer R 443.

The property in possession of A. B. as
farmer and occupier for several years.
and during his occupation, laid out
considerable sums in Buildings, and
other improvements, for which he was
allowed compensation &c

Felin v Brantine & 3 Edwards Ch R 323. 4.

The party made improvements believing
that he had title to the whole property.
and was therefore allowed his improve-
ments in partition.

Nov 50
Rowan

7




Brooks &
McCallen
Asprey
Collection, —
Lefts prints in

Know all men by these presents that
We, Stephen R. Rowan, and Peter M^c
Murchy —
are held and firmly bound unto Joseph
Bowles & Rebecca Bowles, his wife, and
Alexander Kirkpatrick and Eliza Jane
Kirkpatrick, his wife, in the penal sum
of Two Thousand dollars, lawful money of
the United States, for the true payment of
which we bind ourselves, our heirs, Executors
and administrators, jointly, severally and
firmly by these presents - signed with our
hands and Sealed with our seals this 27th
day of November 1857.

The Condition of the above obligation
is such that whereas on the 2nd day of Nov.
1855, at the October Term 1855 of the Cir-
cuit Court of Gallatin County, Illinois,
the said Court made and Entered a decree
in a suit in Chancery therein pending
wherein Joseph Bowles & Rebecca Bowles, his
wife, and were Complainants, and Stephen
Rowan, Admr of Alexander Reid deceased,
Andrew McCallen, Mary Ann McCallen, his
wife, Josephine McCallen, Mary McCallen,
Andrew J. McCallen, Alexander Kirkpatrick
and Eliza Jane Kirkpatrick, his wife, were
defendants - directing the sale of the real

estate of which Alex. Reid died seized, and for
other purposes - and whereas also, the
same Court, on the 31st October 1857. at
the October term 1857 of said Court,
made and entered another decree in
the same cause aforesaid, in favor of
said Boyles & wife and against said
Rowan, for the sum of Eight-hundred
and Eighty nine dollars, and in favor
of said Kirkpatrick and wife, against
said Rowan for the sum of one hundred
and forty four dollars, and authorized
the issuing of Execution thereon - upon
which said two decrees the said Rowan
has sued out a writ of Error in the Su-
preme Court of the State of Illinois - which
said writ of Error is to operate as a super-
seedeas therein - Now if said Rowan shall
duly prosecute his said writ of Error, and
shall pay the decree or decrees, costs, in-
terest and damages in case the said
decrees shall be affirmed - then this bond
to be void - otherwise to remain in full
force and virtue -

Witness
N. L. Freeman

Stephen R. Corrao 
Peter McMurphy 


77-0858

62 1/3

Rowan

us

Bowles et al

Bund -

Filed 20. Nov. 1857.
N. Johnston atty

In Supreme Court. November 1859

Stephen R. Rowan } Motion by Defendants
against } to Return the costs
Joseph B. Burtis & }
}

The said defendants move, and say, That
the Record in this cause, should have
contained the following papers, in
connection with the orders of Court
entered in the progress of the cause.

1 The Bill filed 27th April 1854.

with the Exhibits attached to the same,

2 The Summons issued thereon

3 The Answer of Rowan & Replication

4 The Answer of McCollum & others heirs of Reid,
& Replication

5 The Decree of Sale.

6 The Reports of Sale & order of Confirmation

7 The Petition for leave to appeal the
points reserved

8 The Decree on this petition,

The Defendants are chargeable with
fees for copying the Record thus made,
They are also chargeable with fees
for printing Abstract of such a Record.

The said defendants allege that the following
papers were improperly copied in the
Page 18 of Record, Rowan's affidavit to set aside default

20. McCollum's Affidavit for leave

22 McCollum's Affidavit for change of venue

- 38 Rowans answer to McCollins Cross bill
- 56. McCollins Cross bill, Strickens from files,
- 73. Original Bill filed 3 March 1844.
- 81 Rowans Answer of 29 October 1844
- 86. Rowans Answer of 6 August 1850.
- 91. Rowans Answer of 13 October 1851
- 135 Notice to take depositions by Hall.
- 136 Depositions of Pongy never read, with
a list of accounts.
- 159 Notice to take depositions
- 160 Same as above

The defendants should be required to pay
for printing ~~the~~ The following parts
of the abstract.

- 1st The matter on first page, and the words
"Rowans filed 3 Answers on 2nd page of
printed abstract,
- 2nd the matter on one last page of printed
Abstract, beginning with the words "At the
May Term 1857"

For the rest of said abstract debts ought
not to pay.

W. Morrison
for Bondholders

52

Brown

vs No 10

Brooks &c

Motion to Return

Specifications

of Brooks &c

for the Court.

all over

Costs to be

returned

STATE OF ILLINOIS, }
SUPREME COURT. } ss.

1st Grand Division

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of *Gallatin* County,

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of *Gallatin* County, before the judge thereof, between *Joseph Bowles and Rebecca Bowles, his wife, Plaintiffs - and Stephen R. Rowan, Administrator of Alexander Reed, Deceased, Andrew McCallan & Mary Ann McCallan, his wife, Josephine McCallan, Mary McCallan, and Andrew J. McCallan, heirs of Alexander Reed, Deceased, Alexander Kirkpatrick & Eliza J. Kirkpatrick, his wife* defendant, it is said that manifest error hath intervened to the injury of said *Stephen R. Rowan*

as we are informed by *his* complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mt. Vernon, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said *Joseph Bowles and Rebecca Bowles, his wife, and Alexander Kirkpatrick and Eliza J. Kirkpatrick, his wife - - - - -*

that *they* be and appear before the Justices of our said Supreme Court, on the first day of the next term of said Court, to be holden at Mount Vernon, in said State, on the *first Tuesday after the* Second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if *they* shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *defendants in error - - - - -* notice, together with this writ.

John D. Eaton

Witness, the Hon. ~~Samuel H. Tamm~~, Chief Justice of our said

Court, and the seal thereof, at Mount Vernon, this *thirtieth* day of *November* in the year of our Lord, one thousand eight hundred and fifty-*seven*

North Johnston

Clerk of Supreme Court.

The Court of error which has been
issued and filed in this cause, is made
a Supersedeas, and is to be obeyed
accordingly. North Johnston Ck

Mr. Scribner

Serving one 4 200 10

$$\begin{array}{r} 10 \\ \hline 210 \end{array}$$

Sewdon 12th Dec / 57

Let centers on all the within names
known by reading in the presence of
John Doe & Richard Roe two good
and faithful men of my Backstreet
This 18th day September 1858
John T. Mattew 886

To serve on
Ct. Willard's wife
of New York

no 13.

Rowan vs Bowler de Error to Gallatin
motion pending to Quash Writ, or
dismiss the suit, for want of proper
parties, - Accidental Authorities
for the motion.

Brewer vs Turner 1 Strange R 232-3 de

Walker vs Stokes 1 Lord Raymond 71.

Walker vs Hackett 5 Modest R 16.

Thomas.

No 13.

Provenum

"

Bowles &c

Motion to Dismiss
for Defect of
Parties.

Accidental Authority.

STATE OF ILLINOIS
SUPREME COURT,

{ SS. 1st Grand Division
THE PEOPLE OF THE STATE OF ILLINOIS;

WRIT OF ERROR.

To the Clerk of the Circuit Court for the county of

Gallatin

GREETING,

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the
Circuit Court of *Gallatin* — county, before the Judge thereof, between

*Joseph Bowler and Rebecca Bowler, his wife &
Alexander Kirkpatrick & Eliza J. Kirkpatrick his wife*
plaintiffs, and *Stephen R. Nowan, Administrator of Abraham Rice, Decd.*
Andrew McCallum and Mary Ann McCallum, his wife, Josephine
McCallum, Mary McCallum and Andrew J. McCallum, heirs of Abraham
Rice, Decd. ~~*Alexander Kirkpatrick & Eliza J. Kirkpatrick, his wife*~~
~~*his wife*~~
defendants it is said manifest error hath intervened, to the injury of the aforesaid *Stephen R. Nowan*

as we are informed by *his*

complaint, and we being willing that error, should be corrected if any there be, in due form and manner, and that
justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly
without delay, send to our Justices of the Supreme Court, the record and proceedings of the plaint, aforesaid,
with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at

Mount Vernon, in the county of jefferson, on the *1st Sunday after the 2^d Monday of*
November next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the
error, what of right ought to be done according to law:

John D. Cotton

Witness, the Hon. *WALTER E. SCATES* Chief Justice
of our said court, and the seal thereof, at Mount Vernon this

thirtieth day of *November*,

in the year of Our Lord One Thousand Eight Hundred
and Fifty-*seven*.

Noah Johnston
11

Clerk Supreme Court.

This sort of error is universal and
 Supererogatory, and is to be obviated
 accordingly. Walter Johnston Clerk

Received of
 A. Schmitz
 the sum of \$10.00
 on the 10th day of
 March 1857

Joseph Smith

Stephen R. Henshaw
in {front of room

31

State of Illinois, the Supreme Court.

First Grand Division

Stephen B. Rowan Plaintiff

against } Judgment of November Term 1858
} upon Error from Gallatin.

Joseph Bowler & wife and

Alexander Kirkpatrick & wife the defendants,

The said plaintiff is hereby notified that on the first day of the next Term of the Supreme Court to be held at Mount Vernon, or as soon thereafter as counsel can be heard, the defendants, Bowler & wife, will move the Court to order the taxation of costs in this case, so as to limit and fix the amount recovered of defendants, to the copying, making and printing, abstracts, of that part of the Record only, which was used in the hearing and decisions of the cause, and to such fees as are properly chargeable against the defendants upon a Record properly made out and certified, if the fees in the case have already been taxed, then, the motion will be to order a relaxation so as to conform to the laws and rights of the parties,

W. H. Thomas
Atty.

Gherman Town

28th October 1859.

William Thomas being sworn states that on the 31st day of October 1859 he delivered a true copy of the above notice to the said Stephen B. Rowan
Subscribed & sworn to
before me this 16th day
of November 1859.

W. H. Thomas
Atty.

[6520-72]

Noah Johnston Clk

52
Bowler knife
as } Antiquary
} motion
S. R. Lawrence

Nov 1859.

copy Delivered to
31 Antiquary 1859.

Filed Nov 16. 1859.
A. S. Lawrence

In Supreme Court

Stephen R. Roman } plff in Error
from Gallatin

Against

Joseph Bowles & Co. } Defs

Motion to Return Costs

In answer to said motion this respondent will state that the record in this case was prepared by L. N. Freeman Esq, and that no papers were copied in said record except such as were necessary to constitute a complete record and for that purpose required by the said Defendant in error, That at the time said case was brought to this Court by writ of Error, there was an other case at law pending in the Gallatin Circuit Court, to recover on identically, the same cause of action and no other; which case is now on file by appeal; This respondent has reason to believe and does verily believe that in case the said plaintiff in error had insisted copying said papers designated in said motion that a motion would have been submitted to dismiss for want of a complete

Record. — This Respondent
further answering will state
that the said Joseph Bowles in
his opinion is among the last
men in the world who would
be likely to make an equitable dis-
tribution of any thing where it
was possible for him to hold on
to all he could get. He would
not be likely to decide however
honorable it might be for him to
do so; This Respondent will here
recite an incident, in support of
this opinion, (To wit,) In the year
1847. Dr John Reid departed this life.
This Respondent being a son in law
was appointed Administrator, the
estate worth about \$0.000, owing
to a difficulty in reference to the
County Seat of Gallatin no Court
was held for nearly 3 years in
1850 Joseph Bowles married the grand
daughter of said John Reid dead,
thereby inheriting one 4th of the
Entire estate; in the meantime
this Respondent erected a monument
to the memory & costing 100\$ paid
all funeral Expenses without being
first proven before the Probate
Justice of the peace

As soon as the vouchers could
be legally presented before the
probate court it was done the
said Joseph Bowles appeared in
person fortified by his lawyer
and objected to each and every
Item of the funeral expenses
being allowed this Respondent
by the court of probate; although
Receipts for Digging the grave Coffin
Shroud Monument &c. on the ground
that the Claims had not been
presented and proved within 2 years
by the administrator. The adminis-
trator should not now prove them
and have credit therefor, -
and the said Joseph Bowles has
never given his consent to the
funeral expenses or any part
thereof up to this day -
The above Statement is true to the
letter John Olney ^{Govr} was personally
present and knows it to be so.
This Respondent doubts whether the
Equity of his Bowles case is any stronger
than in Motion is any stronger than
the Case above presented before the
probate Court in Gallatin
This Respondent insists that one dead at
the same time for the same cause of
action should succeed and this

That the feeble and execution has been
 sparer to the shrink of execution before some motions
 & that he is in no manner his possible
 for any portion of the costs in said
 case and for these and other
 reasons he feels satisfied that
 that the honorable court will not
 disturb the decision they have made

D. W. Rowan

oply in even

*Dever to and submitted
 before me 17th Nov. 1859
 N. Johnston atty*

Howler Sweep

*by
 Rowan*

motion

Filed Nov. 17. 1859.

N. Johnston C.M.

In Supreme Court of Illinois
First Grand Division
November Term 1858

Stephen R. Browner

against Error from Gallatin

Joseph Bowler & Rebecca Bowler his wife
Alexander Kirkpatrick and
Eliza Kirkpatrick his wife
The said defendants by W. Thomas their
Attorney move the court to dismiss
this cause, because it appears by the
Record filed herein, that the decree
of the circuit court, alleged to be
erroneous, was rendered against
the said plaintiff in error and
Andrus McCullen, Mary Ann McCullen,
his wife, Josephine McCullen, Mary
McCullen, and Andrus J. McCullen
heirs of Alexander Rice deceased,
who were parties to said suit, and
instigated in the result thereof
no one of whom are made parties
to the suit before this court,

W. Thomas for Defts

To sustain the motion see

Statutes of Illinois part 2 p 828

2 Tidds practice top page 1135

Legg vs Christmas 2 Scam 46

That there must be proper parties

3 Gillespie 408.

161.85
566
\$106.91

No 13.

Proctor

4 2 Envelopes

3 Valentines

Bowling

Motion & Limbs

11 November 1858.

Wm. Overmiller

Filed Nov. 11. 1858

A. Johnston Clerk

S. R. Rowan - Plff. in Error.

vs.

Bowles & wife

et al. Defts in Error.

Brief of plff. in Error.

The finding in the decree of 2nd Nov. 1855 that Rowan had paid out a given amt. upon 4th Class claims in his own wrong, is erroneous -

1st Because there is no allegation in the Original Bill relating to any such matter - and

2nd Because even ^{if} there were, there is not evidence to support such a finding.

Rowan is entitled to a credit for the taxes paid, even after notice of Bowles's claim because Bowles, in his bill, (page 9 of the record) says it was his duty to pay them, & it does not lie in his mouth now to deny it.

The evidence must correspond with the allegations - or the decree will be erroneous if based upon such evidence - the evidence when offered need not be objected to - the Compt. must see that his bill, his proofs & the decree correspond -

McKay vs Bissett - 5 Gilm. 504.

Root vs. Benwick 15 Ill. 463

Morgan vs Smith 16 " 200 -

White vs Morrison 16 " 366 -

Brewer

vs

Bowles et al

Brief of Plff in

Error -

N. L. Freeman

atly

STATE OF ILLINOIS—IN THE SUPREME COURT—FIRST
GRAND DIVISION—OF NOVEMBER TERM, 1857.

STEPHEN R. ROWAN, Plaintiff in Error, } Error to Gallatin.
v s. }

JOSEPH BOWLES and REBECCA BOWLES, his wife, and } Abstract of Plain-
ALEXANDER KIRKPATRICK and ELIZA J. KIRKPATRICK, } tiff in Error.
his wife, Defendants in Error. }

Pages of
Record.

1. This was a bill in chancery, filed in the Circuit Court of Gallatin County, on the 27th April, 1854, by Joseph Bowles, and wife, against Stephen R. Rowan, Administrator of Alexander Reid, deceased, Andrew McCallen and Mary Ann McCallen, his wife, Josephine McCallen, Mary McCallen and Andrew J. McCallen, heirs of Alex. Reid deceased, Alexander Kirkpatrick and Eliza J. Kirkpatrick, his wife, stating, in substance, that, at the special October term, 1853, of said court, in a suit in chancery, pending therein, between said Bowles and wife, and Kirkpatrick and wife, complainants, against said Rowan, Administrator of Alex. Reid, deceased, and administrator DE BONIS NON of James Reid, deceased, a decree was made in favor of Bowles and wife, for \$3,963 ⁵⁷/₁₀₀ and \$61 ³⁰/₁₀₀ costs, payable out of the estate of Alex. Reid, and in favor of Kirkpatrick and wife for \$651 ²⁶/₁₀₀, payable out of said estate, which had not been inventoried or accounted for before the commencement of said suit, which sums were found to be due from the estate of Alex. Reid, on a settlement of his accounts, as administrator of James Reid, deceased.
3. That Rowan claims the personal estate of Alex. Reid has been exhausted in paying other debts, and that he has no assets to pay decree.
3. That Rowan filed with the Court of Probate a list of lands of which Alex. Reid died seized—describing the lands.
4. That the true time of filing said list is unknown to complainants.
- 4-6. The bill charges that Alex. Reid died seized of certain real estate, which is described.
6. That Rowan says he has paid all the claims against estate of Alex. Reid, except those in favor of Bowles and wife and Kirkpatrick and wife, which remain unpaid.
7. The bill charges that Bowles and wife are entitled to the payment of the amount due them upon said decree out of estate inventoried by said Rowan before the commencement of the suit in which said decree was entered, and that Kirkpatrick and wife are entitled to be paid out of estate not so inventoried, and not accounted for by Rowan, administrator, and that an equitable lien exists upon said estate for the payment of said claims.
8. That Rowan has failed to pay the decree, or to sell the realty to pay it.
9. That Rowan has allowed a part of said realty to be sold for taxes.
9. That there is not a sufficiency of the personal estate of Alex. Reid to pay all the debts.
11. The Bill prays that the heirs of Alex. Reid be decreed to pay said decree, and, if they do not, that said realty be sold for that purpose.
- 17-24-35 The answers of the infant defendants, by their guardian, ad litem, were filed.
- 46-51. Also, the answer of Rowan, and the answer of Kirkpatrick and wife,
- 53-4. and the issue being joined, the cause was heard upon the following evidence:

Amman - Suit & Answer,

Answer regarding Answer to Pay.

Bowles wife filed Bill suggesting
aspects &c -

Facts found by the court, of which
Rowan complains, -

Answer upon petition &c -

X Rowan proposes to question the
truth of finding &
no allegation in the bill on
which answer can be made by,

but the answer &c of McCallum &c

Suppose this finding had resulted from
a Report of Master &c
& no exception taken to Report, -

The truth of that finding not material
because the facts appear, that
the arguments were improperly made,
& Rowan is not injured by the
finding, -

Now is it material to Rowan
or to the Master whether he paid
before or after filing the bill &c

The question is what does the answer
say. -

FIRST—The decree which was rendered in the suit for an account, on 2nd November, 1853.

72. That decree directs Rowan, as administrator of Alex. Reid, out of assets of said estate, (if any there were), which might have been discovered since the commencement of that suit, (which was on 3d March, 1844—see page of record, 80), or which might thereafter be discovered, to pay to Kirkpatrick and wife the sum of \$651 $\frac{86}{100}$, which was found to be due them from the estate of Alex. Reid: and that out of any of said estate, then in his hands, or which might thereafter come to his hands, he should pay to Bowles and wife the sum of \$3963 $\frac{51}{100}$ and costs of suit.

70. Said decree found that said Eliza J. Kirkpatrick, who was the widow of James Reid, was sole and unmarried at the time of granting letters of administration upon the estate of Alex. Reid, and that more than two years elapsed from the granting of said letters until the presentation of her claim against said estate, and that her claim was forever barred, except as against assets discovered (or to be discovered) after the commencement of that suit.

The decree found the sums, as above directed to be paid, due to said Eliza Jane Kirkpatrick and Rebecca Bowles, from the estate of Alex. Reid, for moneys, &c., which had come to his hands as administrator of James Reid, of whose estate said Eliza J. and Rebecca were distributees.

71. Rowan filed three answers to original bill for an account, as follows:

80. ANSWER OF ROWAN OF 29TH OCTOBER, 1844.

81. On 29th October, 1844, Rowan answered the original bill for an account, as follows: That he knew nothing of the condition of James Reid's estate further than appeared from the files and books of the Probate office of Gallatin County, and the books and papers of Alex. Reid—that he found that Alex. Reid returned an inventory of debts, notes and accounts due estate of James Reid, as follows:

Good \$73 $\frac{37\frac{1}{2}}{100}$; Doubtful \$2,572 $\frac{37\frac{1}{2}}{100}$; Desperate \$2,517 $\frac{47}{100}$; and that he collected and made returns to said office, at three different settlements, all of the good debts, say \$73 $\frac{37}{100}$, and \$1,372 $\frac{88\frac{1}{2}}{100}$ of the doubtful debts, leaving uncollected on 7th October, 1833, the date of the last settlement, of the doubtful debts \$1,199 $\frac{49}{100}$, and all of the desperate.

82. That Alex. Reid appeared to be further chargeable with the amount of the sale bill of James Reid's Estate, \$917 $\frac{70\frac{1}{2}}{100}$.

Making total of everything, collected by Alex. Reid, of James Reid's estate:—\$2,363 $\frac{96\frac{1}{2}}{100}$.

That respondent, since he became administrator of Alex. Reid, has returned to Probate office other collections made by Alex. Reid, as administrator of James Reid, taken from a small square book of Alex. Reid's, amounting to \$205 $\frac{93}{100}$, and taken a credit for vouchers filed to the amount of \$97 $\frac{75}{100}$ —thus leaving a further sum of \$108 $\frac{18}{100}$, to be added to the said sum of \$2,363 $\frac{96}{100}$ —making \$2,472 $\frac{14}{100}$, for which Alex. Reid would appear to be chargeable as administrator of James Reid.

83. Against this aggregate sum Rowan claims a credit for Alex. Reid of \$——, paid out in course of administration, and allowed by Probate Court—and for the further sum of \$70 $\frac{12\frac{1}{2}}{100}$, paid to Alex. Reid as guardian for Rebecca Reid. Besides \$70 $\frac{12\frac{1}{2}}{100}$, there also came to hands of Alex. Reid, as such guardian, \$313 $\frac{15}{100}$, being said Rebecca's share of rents of town lot of which James Reid died seized.

upon what our Rowan rely in his
answer, —

Admits that Rowan is liable, if he
paid with knowledge to
his notice was \$1800.

The whole estate is only \$1500.

Rowan could pay, not the personal
estate, & look to real estate, —

could not avoid paying

4th class claims, — where is the

order of court requiring him
to pay for —

— the claims of his 12 private wife

87

80

11

10

15

Thus making \$383 $\frac{62\frac{1}{2}}{100}$, which came to the hands of Alex. Reid as such guardian, upon which sum Rowan claims a credit of \$32 $\frac{70}{100}$ paid out by said guardian, leaving \$350 $\frac{92\frac{1}{2}}{100}$ balance in the hands of Alex. Reid, as guardian, at the time of his death.

84. That \$156 $\frac{75}{100}$, being one third of all the rents collected, was paid over to said Eliza J. Kirkpatrick, as widow of James Reid.

85. Rowan says that none of the estate of James Reid ever came to his hands, but that he paid over to said Eliza J. and the guardian of said Rebecca, \$90 $\frac{20}{100}$ out of assets of estate of Alex. Reid—to wit, to said Eliza J. \$65 $\frac{20}{100}$, and to Alex. Kirkpatrick, guardian, \$25.

ANSWER OF ROWAN OF 6TH AUGUST, 1850.

On the 6th August, 1850, Rowan, administrator of James Reid, filed a further answer to said original bill for an account, as follows:

86. That he knew nothing of the condition of James Reid's estate further than appeared from the files and books of the Probate office, and the books and papers of James Reid, and the books and papers of Alex. Reid.

That he finds that Alex. Reid returned an inventory of debts, notes and accounts, due James Reid's estate, as follows:

87. Good \$73 $\frac{37\frac{1}{2}}{100}$; Doubtful \$2,572 $\frac{37\frac{1}{2}}{100}$; Desperate \$2,517 $\frac{47\frac{1}{2}}{100}$; and that Alex. Reid returned a sale bill of personalty of James Reid for \$917 $\frac{70}{100}$. Also, that Rowan found among papers of Alex. Reid, evidence of notes due to John Reid and James Reid, under the firm of John Reid & Son, having come to hands of Alex. Reid as administrator of James Reid, amounting to \$217, one half of which were due to James Reid. Also, Alex. Reid returned an inventory of personalty of James Reid of \$882 $\frac{73}{100}$ —and for debts, not reported, and which appeared from books of James Reid to be due, the sum of \$158 $\frac{98}{100}$. Making in all, with which Alex. Reid, as administrator of James Reid, was chargeable, including doubtful and desperate debts, the sum of \$7,231 $\frac{133}{100}$.

Rowan also found, among the papers of Alex. Reid, notes due to James Reid, yet uncollected, for \$701 $\frac{92}{100}$.

88. Also, notes, due to John Reid & Son, uncollected, for \$116 $\frac{50}{100}$, one half of which is,..... \$ 58 25

Also amount of uncollected accounts,..... 1825 99

Also vouchers filed, and for which Alex. Reid received a credit on

Probate books, for..... 1845 28

Also inventory of personalty, charged above,..... 882 73

Making, in all, of credits, to which estate of Alex. Reid is entitled, 5313 97

Leaving due the estate of Jas. Reid, from the estate of Alex. Reid, 1917 16

Rowan finds, from books and papers of Alex. Reid, that he received

as guardian of said Rebecca Reid, for rents and claims due, 383 62

Rowan also says that, of said debts, which were uncollected, he thinks \$146 $\frac{92}{100}$ could have been collected; as to remainder, he cannot say. He, Rowan, has not endeavored to collect them since they came to his hands, because he could not prove them—and they were of ten years standing.—

89. And he had not endeavored to collect the notes due Jas. Reid, as he did not know, until recently, that he had them.

89. As to condition of Alex. Reid's estate, Rowan says the amount of sale bill is..... \$ 678 27 $\frac{1}{2}$

Amount of debts collected and reported to Probate office..... 466 41

Amount collected and not reported.....	— —
Debts due the estate—doubtful.....	683 00
Accounts and notes.....	185 62
Desperate accounts.....	4442 47
Notes.....	357 25

90. Rowan says that, as to the application of the funds of estate of James Reid, or the funds of said Rebecca, by said Alex. Reid, to his own use, he knows nothing, except what Alex. Reid told him, during his last illness, which was, that he, Alex. Reid, had used the money of said Rebecca, and could not have got along without it, and also requested Rowan to borrow money and mortgage real estate of said Alex. Reid to secure its re-payment—and with the money, so borrowed, to pay said Rebecca—and that the amount would be \$1,800 before Rowan would be able to pay it.

ANSWER OF ROWAN OF 13TH OCTOBER, 1851.

91. On 13th October, 1851, Rowan filed a further answer to the said original bill for an account, in which he stated, as in his former answers, that he knew nothing of the condition of James Reid's estate further than appeared from the books of the Probate office, and the books and papers of James and Alex. Reid.

92. That Alex. Reid returned an inventory of notes and accounts due James Reid of.....\$5163 22³/₄
Also inventory of personalty..... 882 73
To which add, for excess of sale bill over appraisment bill,..... 34 97
Making total from Probate books, with which Alex. Reid, as administrator of James Reid, is chargeable..... 6080 92³/₄

Also, Rowan found, among papers of Alex. Reid, notes due John Reid & Son, which appeared to be listed in a book of Alex. Reid—thinks they were not inventoried by Alex. Reid, because John Reid, as surviving partner, had the sole right to collect them.

92. Rowan also found, among papers of Alex. Reid, notes and accounts due James Reid—uncollected—\$2,766 ³⁶/₁₀₀.

93. Vouchers filed and allowed in Probate office \$1,845 ²⁸/₁₀₀—which two last named sums, with \$87 ^{71¹/₂}/₁₀₀ paid out by said Alex. in course of administration, but not reported or allowed, as also commission not before allowed \$12 ³⁵/₁₀₀, amount to \$4,711 ^{70¹/₂}/₁₀₀, as credits to be taken from the aforesaid debits of \$6,080 ^{92³/₄}/₁₀₀, leaves a balance against Alex. Reid, as administrator of James Reid, of \$1,269 ^{23¹/₂}/₁₀₀—to which should be added the further sum of \$205 ^{93¹/₂}/₁₀₀, not reported, but which seemed to have been collected, making total balance against Alex. Reid of \$1,475 ^{13¹/₂}/₁₀₀. That the charges and credits, set forth in his previous answer of August 6th, 1850, were based upon estimates made by said Bowles, and Rowan believes they are not correct. Rowan believes the said \$87 ^{71¹/₂}/₁₀₀ was wholly omitted from his answer of August 6th, 1850, and that answer also omitted \$12 ³⁵/₁₀₀ due to Alex. Reid for commissions.

94.

Rowan says James Reid collected, shortly before his death, large sums of money, which he believes came to the hands of said Eliza J., widow of James Reid.

He says that, since his answer of 6th August, 1850, he has been informed and believes that some of the accounts returned by Alex. Reid, as due James Reid, were collected by James Reid in his life time.

He believes that Bowles intended to overreach him in his computations on which said answer of August 6th, 1850, were based.

95. That, upon further examination of the books and papers of James and Alex. Reid, since his answer of August 6th, 1850, he believes that the sum of \$1,917 $\frac{16}{100}$ in said answer, admitted to be due from estate of Alex. Reid to estate of James Reid, is more than was actually due, as appears from this answer.

Since the answer of 6th August, 1850, Rowan has learned some of the items which he intended to make up the aggregate sum of \$146 $\frac{92}{100}$, which he, in said answer, admitted to have been collected, were collected by James Reid in his life time.

96. Rowan finds, from books and papers, that Alex. Reid, as guardian of Rebecca, received \$383 $\frac{62}{100}$, and paid out thereof \$32 $\frac{70}{100}$ —thus leaving said Alexander, at the time of his death, indebted, as guardian to said Rebecca, \$350 $\frac{92}{100}$.

He states that \$156 $\frac{75}{100}$, being one third of all the rents collected by Alex. Reid, was paid to said Eliza J., widow of Jas. Reid. Rowan, as administrator of Alex. Reid, paid to said Eliza J. \$18 $\frac{75}{100}$, also to her as natural guardian of said Rebecca \$24—and to Alex. Kirkpatrick as guardian \$171 $\frac{57}{100}$ —and to said Rebecca herself \$60—thus making \$274 $\frac{32}{100}$, paid by Rowan, on account of above amounts, supposed to be due from Alex. Reid to estate of Jas. Reid—and has also paid the further sum of \$22 for repairing the house occupied by said Eliza J.

97. States that Alex. Reid died in October, 1841—administration was granted the same year, and this bill, for an account, was filed 3d May, 1844—and sets up the two years limitation.

- 102-134. The vouchers filed by Rowan, as administrator of Alex. Reid, showing the payment of debts of said estate by him, show that they were all paid before the 3d March, 1844, the time of the filing of the bill for an account, with the following exceptions:

122.	Amount paid to Daniel Golden for use of hearse at funeral of Alex. Reid—	
	1st November, 1845,.....	\$ 5 00
122-3.	Amount paid to Rupert & Lindenberger—May 3rd, 1844,.....	38 06
123.	Amount paid Eddy & Posey, attorneys fees for defending the suit	
	for an account, &c.—13th December, 1845,.....	50 00
123-4.	Amount taxes paid on realty of Alex. Reid—15th December, 1845,	28 84
124-5.	Amount taxes paid on realty of Alex. Reid—31st October, 1844,	12 60
126.	Amount taxes paid on realty of Alex. Reid—22nd April, 1845,	7 50
126-7.	Taxes for 1845, on realty of Alex. Reid,.....	15 12
127.	Taxes for '45, on town lots,.....	11 20
127-8.	Taxes for '45, on lands in White County,.....	7 50
128.	Taxes for 1846, on town lots,.....	14 25
128-9.	Taxes for '46, on lands,.....	20 52
129.	Taxes for 1847,.....	9 24
129.	Taxes for '47, on Reid & Rowan's land,.....	8 37
130.	Taxes for 1848,.....	8 94
130.	Taxes for " on Reid & Rowan's land,.....	8 34
131	Taxes for 1849, on town lots,.....	14 05
"	Taxes for " on Reid & Rowan's land,.....	4 87
132-3.	Amount clerk's fees paid to J. E. Hall, 19th October, 1850,.....	3 70

133.	Taxes for 1850,.....	17 70
133.	Taxes for 1851, on Reid & Rowan's land,.....	4 21
134.	Amount clerk's fees to Hall—3rd February, 1851,.....	1 75

Making the entire sum, as shown by said vouchers, which Rowan paid out, as administrator of Alex. Reid, after the filing of said bill for an account—to wit: 3rd March, 1844—to be \$291 $\frac{76}{100}$ —of which aggregate sum, \$5 were for the hearse which attended the funeral of Alex. Reid; \$5 $\frac{45}{100}$ for fees paid to the clerk for costs arising in the course of administration; \$50 paid to Eddy & Posey as attorneys for the administrator in defending the interests of the estate; and \$37 $\frac{16}{100}$ paid upon the account of Rupert & Lindemberger, which seems, from the vouchers filed, to have been the only claim of the fourth class paid after 3rd March, 1844.

85. The record does not show that any summons issued upon the bill for an account, and Rowan's first answer to that bill was not filed until 29th October, 1844.

263. The decree of 2nd November, 1855, in the suit for a sale of the realty of Alex. Reid's estate to pay the decree of 2nd November, 1853, finds this fact: that, in paying out the assets of the estate of Alex. Reid, Rowan, the administrator, paid claims of the fourth class to the amount of \$935 $\frac{21}{100}$, and that all of said claims were paid subsequent to the filing of the bill in the suit for an account, and the service of process issued thereon, on which the decree of 2nd November, 1853, was entered.

263-4. The decree further finds that Alex. Reid died seized of certain real estate

265. That there was then due Bowles and wife, on said decree of 2nd November, 1853, the sum of \$4,563 $\frac{93}{100}$.

And due to Kirkpatrick and wife, the sum of \$729 $\frac{41}{100}$.

266. And the court being of opinion that the real estate of Alex. Reid is chargeable with the payment of all the just debts and claims against said estate, remaining unpaid, after the personal estate is exhausted, and it being unknown what amount the real estate would produce, when sold, reserved the questions as to the liability of said Rowan to pay Bowles and wife, and Kirkpatrick and wife, and the right of said parties to a decree for any part of the amount due them, as aforesaid, as preferred creditors, whose claims should have been paid as of the 3rd class, until the coming in of the report of the sales of the realty.

262. The decree also found that there were no personal assets in the hands of Rowan, as administrator of Alex. Reid.

266. The decree directs a sale of said realty to pay said decree of 2nd November, 1853, and directs that the proceeds of such sale be applied:

FIRST, To the payment of taxes on the premises sold, and to the redemption thereof from sales for taxes.

SECOND, To the payment of the costs of this suit—and

267. THIRD, To the payment of the amount due Bowles and wife, and Kirkpatrick and wife; and, if the proceeds of the sale should not be sufficient to pay the last named sums, then, the same to be divided between said parties in proportion to the amounts decreed.

269. And the cause was continued for the further action of the court upon the questions not decided, and for the report of the commissioner.

90. In the answer of Rowan, of 6th August, 1850, to the original bill for an account, he states that Alex. Reid, during his last illness, told him

that he would owe Rebecca Reid (now said Rebecca Bowles) the sum of \$1800, before he, Rowan, would be able to pay it out of the estate.

140. Alex. Reid died in October, 1841.

Taking the \$1800 to be due to said Rebecca on 1st October, 1841, the interest thereon, at 6 per cent. per annum, from that time to the rendition of the decree of 2nd November, 1853, twelve years and one month, would amount to \$1305—making amount of principal and interest, according to that admission, due 2d November, 1853, to be \$3105—and interest thereon, from 2nd November, 1853, to sale of realty, 7th January, 1856, \$403 65—making, in all, according to such admission, due to said Rebecca, on 7th January, 1856, \$3508 65.

278. The report of the commissioner shows the gross proceeds of the sales of the realty to amount to \$3633 92. After deducting \$469 02 otherwise applied, leaves to be applied to the payment of the decree \$3164 90. The
280. commissioner paid out of that amount to Bowles and wife \$2797 47, and to
281. Kirkpatrick and wife \$453 08, and the action of the commissioner was approved by the court.

283. At the May Term, '57, Bowles and wife entered a motion for a decree against Rowan for the amount which he had paid out, as administrator of Alex. Reid, upon fourth class claims, after he had knowledge of the third class claim of Bowles and wife.

282. At the July term, following, that motion was overruled, upon the ground
289. that, as the decree of 2d Nov., 1855, was made by his predecessor, the proper mode of obtaining a decree, upon the questions reserved in the former decree, was by petition—and so the motion was disallowed, without prejudice.

284. At the July Term, 1857, Bowles and wife filed their petition, reciting the said decree of 2nd November, 1855, and the commissioners report of
287. sales of realty, showing the nett proceeds of said sales to have been \$3,164 $\frac{90}{100}$ —that the amount due Bowles and wife, on the day of such sale, was \$4,559 $\frac{53}{100}$ —and to Kirkpatrick and wife \$738 $\frac{52}{100}$ —that, out of the proceeds of said sale, there was paid to Bowles and wife \$2,724 $\frac{90}{100}$, and to Kirkpatrick and wife \$401 $\frac{33}{100}$ —that the balance due on said decree, on 7th January, 1856, was \$2,164 $\frac{90}{100}$, of which \$1,834 $\frac{62}{100}$ was due to Bowles and wife, and \$297 $\frac{19}{100}$ to Kirkpatrick and wife. The petition asks that Rowan be decreed to pay \$935 $\frac{21}{100}$, which he had improperly paid on fourth class claims—\$804 $\frac{84}{100}$ of that sum to Bowles and wife, and the residue,
288. \$130 $\frac{37}{100}$, to Kirkpatrick and wife, with interest from 7th January, 1856.

289. Subsequently, on the 31st October, 1857, the court entered a decree in
290. pursuance of said petition. It was thereby decreed that Rowan was liable to pay to Bowles and wife, and Kirkpatrick and wife, their proportional parts of the sum of \$935 $\frac{21}{100}$, with six per cent interest, from 7th January,
291. 1856—that amount having been improperly paid out by him, as administrator of Alex. Reid, on fourth class claims, with knowledge of the existence of the third class claims of said parties; and the court ordered that Bowles and wife recover of Rowan \$889, their pro rata part of the said sum of \$935 $\frac{21}{100}$, including interest to date of this decree—and that Kirkpatrick and wife recover of Rowan \$144, their pro rata part of the same, including interest to date of this decree—and that Rowan pay the costs of this suit, accruing since the entering of the motion, at the May Term, 1857.

N. L. FREEMAN, Attorney

for plaintiff in error.

J. W. EDWARDS, PRINTER, SHAWNEETOWN.

IN RE ESTATE OF ALEX. REID

and settling since the entering of the motion at the July Term, 1891.
interest to date of this decree—and that Roman pay the costs of this
and wife recover of Roman \$144, their pro rata part of the same, including
\$332 ¹⁰⁰/₁₀₀, including interest to date of this decree—and that Kirkpatrick
and wife recover of Roman \$228, their pro rata part of the said sum of
of the third class claims of said parties; and the court ordered that Bowles
trust of Alex. Reid, on fourth class claims, with knowledge of the existence
1890—that amount having been improperly paid out by him, as administra-
tor of the estate of \$332 ¹⁰⁰/₁₀₀, and six per cent interest from the January, 1890,
to pay to Bowles and wife, and Kirkpatrick and wife, their proportionate
share of said portion. It was therefore decreed that Roman was liable
thereof, on the 31st October, 1891, the court entered a decree in
\$130 ¹⁰⁰/₁₀₀ to Kirkpatrick and wife, with interest from the January, 1890,
class claims—\$204 ¹⁰⁰/₁₀₀ of that sum to Bowles and wife, and the residue,
Roman be decreed to pay \$332 ¹⁰⁰/₁₀₀, which he had improperly paid on fourth
and wife, and \$301 ¹⁰⁰/₁₀₀ to Kirkpatrick and wife. The petition asks that
the January, 1890, was \$3,164 ¹⁰⁰/₁₀₀, of which \$1,234 ¹⁰⁰/₁₀₀ was due to Bowles
to Kirkpatrick and wife \$401 ¹⁰⁰/₁₀₀—that the balance due on said decree, on
proceeds of said sale, there was paid to Bowles and wife \$3,134 ¹⁰⁰/₁₀₀, and
was \$1,200 ¹⁰⁰/₁₀₀—and to Kirkpatrick and wife \$132 ¹⁰⁰/₁₀₀—that out of the
\$3,164 ¹⁰⁰/₁₀₀—that the amount due Bowles and wife, on the day of such sale,
sales of realty, showing the net proceeds of said sales to have been
the said decree of 2nd November, 1890, and the commissioners report of
At the July Term, 1891, Bowles and wife filed their petition, reciting
was by petition—and so the motion was disallowed, without prejudice,
mode of obtaining a decree, upon the questions referred in the former decree,
that as the decree of 29 Nov. 1890, was made by the commissioners, the proper
At the July Term, following, that motion was overruled, upon the ground
of claims of Bowles and wife.
Alex. Reid, upon fourth class claims, after he had knowledge of the third
that Roman for the amount which he had paid out, as administrator of
At the May Term, '91, Bowles and wife entered a motion for a decree
to pay to the court
Kirkpatrick and wife \$423 08, and the action of the commissioner was
commissioner paid out of that amount to Bowles and wife \$3,164 42, and to
applied, to be applied to the payment of the decree \$3,164 00. The
of the total to amount to \$3,033 05. After deducting \$400 03 of arrears
The report of the commissioner shows the gross proceeds of the sales
January, 1890, \$3,208 00.
making, according to such admission, due to said Herress, on 1st
Nov. 2nd November, 1890, to wife of Alex. Reid, January, 1890, \$400 00—
that admission, due 29 November, 1890, to be \$3,100— and interest thereon,
amount to \$1,200—making amount of Bowles and wife, according to
of the decree of 2nd November, 1890, \$3,164 42, and one month, more
interest thereon, at 6 per cent per annum, from that time to the rendition
making the \$1,200 to be paid to said Herress on 1st October, 1891, the
Alex. Reid died in October, 1891.
\$1,200, before he, Roman, would be able to pay it out of the estate,
that he would owe Herress Reid (now said Herress Bowles) the sum of

Roman pays in
error

in Nov 1898

Bowles de la

in error

pays abstract

175

S. R. Rowan & wife Appeal from
 us
Joseph Bowles & wife Galeatin.
and others - - -

- 1 This was an appeal taken by agreement, and therefore is not within the general rule in reference to appeals.
- 2 That equity may and ought to be resorted to, see Adams on Equity p. 517; 6 Vesey 73, 89. In Pennsylvania 7 Serg. & Rawle p. 467; 1 Gilman, 44; 13 Alls. 107.
- 3 Each party ought to have the portion that will best accommodate him. Ad. Eq. p. 523; Story vs. Johnson, 1 G. & C. 538; 2d G. & C. 586.

4. Allowed for improvements of a substantial nature - 1 Gilman 39-44; 3rd Ed. C. R. 323; 1 Greene Ch. 341; 6 Dand. 276; 7 Dana 176; or as is most usual, share to embrace improvements. 3 Paige's Chy R. 553; 1 Pr. Williams, 447; 4 Hare, 97; 3 Sanford's C. R. 64.

5. In case land cannot be divided. Ad. Eq. p. 522; note 10. do. 470; 1 McM. Eq. 63; 4 S. C. R. 228; 5 Har. & S. 459; 1 Dev. C. R. 23; 3 John. 302; 2 Paige 227; 4 Har. & S. 112; pecuniary compensation may be decreed.

6. The widow Mary out was owner for life - Rowan was tenant of the widow; see affidavits - and did not occupy under the heirs - He paid rent to the widow -

Nelson & Johnson, for
Appellants -

Rouan & Wije

as

Rouan & Wije

Appellants' Brief

STEPHEN R. ROWAN, Plaintiff in Error,
vs.
Error to Gallatin.

JOSEPH BOWLES and REBECCA BOWLES, his wife, and	} Abstract of Plain-
ALEXANDER KIRKPATRICK and ELIZA J. KIRKPATRICK,	
his wife, Defendants in Error.	tiff in Error.

This was a bill in chancery, filed in the Circuit Court of Gallatin County, on the 27th April, 1854, by Joseph Bowles, and wife, against Stephen R. Rowan, Administrator of Alexander Reid, deceased, Andrew McCallen and Mary Ann McCallen, his wife, Josephine McCallen, Mary McCallen and Andrew J. McCallen, heirs of Alex. Reid deceased, Alexander Kirkpatrick and Eliza J. Kirkpatrick, his wife, stating, in substance, that, at the special October term, 1853, of said court, in a suit in chancery, pending therein, between said Bowles and wife, and Kirkpatrick and wife, complainants, against said Rowan, Administrator of Alex. Reid, deceased, and administrator DE BONIS NON of James Reid, deceased, a decree was made in favor of Bowles and wife, for \$3,963 $\frac{57}{100}$ and \$61 $\frac{30}{100}$ costs, payable out of the estate of Alex. Reid, and in favor of Kirkpatrick and wife for \$651 $\frac{26}{100}$, payable out of said estate, which had not been inventoried or accounted for before the commencement of said suit, which sums were found to be due from the estate of Alex. Reid, on a settlement of his accounts, as administrator of James Reid, deceased.

3. That Rowan claims the personal estate of Alex. Reid has been exhausted in paying other debts, and that he has no assets to pay decree.
3. That Rowan filed with the Court of Probate a list of lands of which Alex. Reid died seized—describing the lands.
4. That the true time of filing said list is unknown to complainants.
- 4-6. The bill charges that Alex. Reid died seized of certain real estate, which is described.
6. That Rowan says he has paid all the claims against estate of Alex. Reid, except those in favor of Bowles and wife and Kirkpatrick and wife, which remain unpaid.
7. The bill charges that Bowles and wife are entitled to the payment of the amount due them upon said decree out of estate inventoried by said Rowan before the commencement of the suit in which said decree was entered, and that Kirkpatrick and wife are entitled to be paid out of estate not so inventoried, and not accounted for by Rowan, administrator, and that an equitable lien exists upon said estate for the payment of said claims.
8. That Rowan has failed to pay the decree, or to sell the realty to pay it.
9. That Rowan has allowed a part of said realty to be sold for taxes.
9. That there is not a sufficiency of the personal estate of Alex. Reid to pay all the debts.
11. The Bill prays that the heirs of Alex. Reid be decreed to pay said decree, and, if they do not, that said realty be sold for that purpose.
- 17-24-35 The answers of the infant defendants, by their guardian, ad litem, were filed.
- 46-51. Also, the answer of Rowan, and the answer of Kirkpatrick and wife,
- 53-4. and the issue being joined, the cause was heard upon the following evidence:

Comp must recover on his allegations of his bill

5 Jul 505
15 Dec 463
11 361
[6520-88]

Thomas

In this class of cases the court may
render a decree upon the ans & proof
although not within the allegations of the
bill as well be seen by the authorities
on my brief

11-34-32

That there is not a sufficiency of the personal estate of Alex. Reid to
pay the debts of said estate and that the real estate of said estate is
not so inventoried and not accounted for by Roman administrator and that
Kirkpatrick and wife are entitled to be paid out of estate
Roman before the commencement of the suit in which said decree was
the amount due them upon said decree out of estate inventoried by said
The bill charges that Bowles and wife are entitled to the payment of
which remain unpaid
Reid, except those in favor of Bowles and wife and Kirkpatrick and wife
That Roman says he has paid all the claims against estate of Alex.
which is described
The bill charges that Alex. Reid died seized of certain real estate
That the true time of filing said list is unknown to complainants
Alex. Reid died seized—describing the lands
That Roman filed with the Court of Probate a list of lands of which
in paying other debts and that he has no assets to pay decree
That Roman claims the personal estate of Alex. Reid has been exhausted
James Reid, deceased
estate of Alex. Reid, on a settlement of his accounts as administrator of
the commencement of said suit, which sums were found to be due from the
out of said estate which had not been inventoried or accounted for before
of Alex. Reid, and in favor of Kirkpatrick and wife for \$201⁰⁰ payable
Bowles and wife for \$2,000⁰⁰ and \$501⁰⁰ costs payable out of the estate
in favor of Bowles and wife of James Reid, deceased, a decree was made in favor of
against said Roman, Administrator of Alex. Reid, deceased, and adminis-
trator between said Bowles and wife and Kirkpatrick and wife, complainants,
October term, 1823, of said court, in a suit in chancery, pending therein
and Elizabeth J. Kirkpatrick, his wife, stating in substance that at the special
Andrew J. McCullen, heirs of Alex. Reid deceased, Alexander Kirkpatrick
Mary Ann McCullen, his wife, Josephine McCullen, Mary McCullen and
Roman, Administrator of Alexander Reid, deceased, Andrew McCullen and
on the 21st April, 1824, by Joseph Bowles and wife against Stephen H.
This was a bill in chancery, filed in the Circuit Court of said County,
between Defendant in Error
Alexander Kirkpatrick and Elizabeth J. Kirkpatrick, all in Error
Joseph Bowles and Rebecca Bowles, his wife, and Administrator of Plain-
Stephen H. Bowles, Plaintiff in Error
Error to Circuit

Record
Pages of

GRAND DIVISION—OF NOVEMBER TERM 1825
STATE OF ILLINOIS—IN THE SUPREME COURT—FIRST

FIRST—The decree which was rendered in the suit for an account, on 2nd November, 1853.

72. That decree directs Rowan, as administrator of Alex. Reid, out of assets of said estate, (if any there were), which might have been discovered since the commencement of that suit, (which was on 3d March, 1844—see page of record, 80), or which might thereafter be discovered, to pay to Kirkpatrick and wife the sum of \$651 $\frac{26}{100}$, which was found to be due them from the estate of Alex. Reid: and that out of any of said estate, then in his hands, or which might thereafter come to his hands, he should pay to Bowles and wife the sum of \$3963 $\frac{51}{100}$ and costs of suit.

70. Said decree found that said Eliza J. Kirkpatrick, who was the widow of James Reid, was sole and unmarried at the time of granting letters of administration upon the estate of Alex. Reid, and that more than two years elapsed from the granting of said letters until the presentation of her claim against said estate, and that her claim was forever barred, except as against assets discovered (or to be discovered) after the commencement of that suit.

The decree found the sums, as above directed to be paid, due to said Eliza Jane Kirkpatrick and Rebecca Bowles, from the estate of Alex. Reid, for moneys, &c., which had come to his hands as administrator of James Reid, of whose estate said Eliza J. and Rebecca were distributees.

71. Rowan filed three answers to original bill for an account, as follows:

80. ANSWER OF ROWAN OF 29TH OCTOBER, 1844.

81. On 29th October, 1844, Rowan answered the original bill for an account, as follows: That he knew nothing of the condition of James Reid's estate further than appeared from the files and books of the Probate office of Gallatin County, and the books and papers of Alex. Reid—that he found that Alex. Reid returned an inventory of debts, notes and accounts due estate of James Reid, as follows:

Good \$73 $\frac{37\frac{1}{2}}{100}$; Doubtful \$2,572 $\frac{37\frac{1}{2}}{100}$; Desperate \$2,517 $\frac{47}{100}$; and that he collected and made returns to said office, at three different settlements, all of the good debts, say \$73 $\frac{37}{100}$, and \$1,372 $\frac{88\frac{1}{2}}{100}$ of the doubtful debts, leaving uncollected on 7th October, 1833, the date of the last settlement, of the doubtful debts \$1,199 $\frac{49}{100}$, and all of the desperate.

82. That Alex. Reid appeared to be further chargeable with the amount of the sale bill of James Reid's Estate, \$917 $\frac{70\frac{3}{4}}{100}$.

Making total of everything, collected by Alex. Reid, of James Reid's estate:—\$2,363 $\frac{96\frac{3}{4}}{100}$.

That respondent, since he became administrator of Alex. Reid, has returned to Probate office other collections made by Alex. Reid, as administrator of James Reid, taken from a small square book of Alex. Reid's, amounting to \$205 $\frac{93}{100}$, and taken a credit for vouchers filed to the amount of \$97 $\frac{75}{100}$ —thus leaving a further sum of \$108 $\frac{18}{100}$, to be added to the said sum of \$2,363 $\frac{96}{100}$ —making \$2,472 $\frac{14}{100}$, for which Alex. Reid would appear to be chargeable as administrator of James Reid.

83. Against this aggregate sum Rowan claims a credit for Alex. Reid of \$ —, paid out in course of administration, and allowed by Probate Court—and for the further sum of \$70 $\frac{12\frac{1}{2}}{100}$, paid to Alex. Reid as guardian for Rebecca Reid. Besides \$70 $\frac{12\frac{1}{2}}{100}$, there also came to hands of Alex. Reid, as such guardian, \$313 $\frac{15}{100}$, being said Rebecca's share of rents of town lot of which James Reid died seized.

Thus making $\$383 \frac{62}{100}$, which came to the hands of Alex. Reid as such guardian, upon which sum Rowan claims a credit of $\$32 \frac{70}{100}$ paid out by said guardian, leaving $\$350 \frac{92}{100}$ balance in the hands of Alex. Reid, as guardian, at the time of his death.

84. That $\$156 \frac{75}{100}$, being one third of all the rents collected, was paid over to said Eliza J. Kirkpatrick, as widow of James Reid.

85. Rowan says that none of the estate of James Reid ever came to his hands, but that he paid over to said Eliza J. and the guardian of said Rebecca, $\$90 \frac{20}{100}$ out of assets of estate of Alex. Reid—to wit, to said Eliza J. $\$65 \frac{20}{100}$, and to Alex. Kirkpatrick, guardian, $\$25$.

ANSWER OF ROWAN OF 6TH AUGUST, 1850.

On the 6th August, 1850, Rowan, administrator of James Reid, filed a further answer to said original bill for an account, as follows:

86. That he knew nothing of the condition of James Reid's estate further than appeared from the files and books of the Probate office, and the books and papers of James Reid, and the books and papers of Alex. Reid.

That he finds that Alex. Reid returned an inventory of debts, notes and accounts, due James Reid's estate, as follows:

87. Good $\$73 \frac{37}{100}$; Doubtful $\$2,572 \frac{37}{100}$; Desperate $\$2,517 \frac{47}{100}$; and that Alex. Reid returned a sale bill of personalty of James Reid for $\$917 \frac{70}{100}$. Also, that Rowan found among papers of Alex. Reid. evidence of notes due to John Reid and James Reid, under the firm of John Reid & Son, having come to hands of Alex. Reid as administrator of James Reid, amounting to $\$217$, one half of which were due to James Reid. Also, Alex. Reid returned an inventory of personalty of James Reid of $\$882 \frac{73}{100}$ —and for debts, not reported, and which appeared from books of James Reid to be due, the sum of $\$158 \frac{98}{100}$. Making in all, with which Alex. Reid, as administrator of James Reid, was chargeable, including doubtful and desperate debts, the sum of $\$7,231 \frac{13}{100}$.

Rowan also found, among the papers of Alex. Reid, notes due to James Reid, yet uncollected, for $\$701 \frac{62}{100}$.

88. Also, notes, due to John Reid & Son, uncollected, for $\$116 \frac{50}{100}$, one half of which is,..... $\$ 58 \ 25$

Also amount of uncollected accounts,..... 1825 99

Also vouchers filed, and for which Alex. Reid received a credit on

Probate books, for..... 1845 28

Also inventory of personalty, charged above,..... 882 73

Making, in all, of credits, to which estate of Alex. Reid is entitled, 5313 97

Leaving due the estate of Jas. Reid, from the estate of Alex. Reid, 1917 16

Rowan finds, from books and papers of Alex. Reid, that he received

as guardian of said Rebecca Reid, for rents and claims due, 383 62

Rowan also says that, of said debts, which were uncollected, he thinks $\$146 \frac{92}{100}$ could have been collected; as to remainder, he cannot say. He, Rowan, has not endeavored to collect them since they came to his hands, because he could not prove them—and they were of ten years standing.—

89. And he had not endeavored to collect the notes due Jas. Reid, as he did not know, until recently, that he had them.

89. As to condition of Alex. Reid's estate, Rowan says the amount of sale bill is..... $\$ 678 \ 27 \frac{1}{2}$
Amount of debts collected and reported to Probate office..... 466 41

Amount collected and not reported.....	— —
Debts due the estate—doubtful.....	683 00
Accounts and notes.....	185 62
Desperate accounts.....	4442 47
Notes.....	357 25

90. Rowan says that, as to the application of the funds of estate of James Reid, or the funds of said Rebecca, by said Alex. Reid, to his own use, he knows nothing, except what Alex. Reid told him, during his last illness, which was, that he, Alex. Reid, had used the money of said Rebecca, and could not have got along without it, and also requested Rowan to borrow money and mortgage real estate of said Alex. Reid to secure its re-payment—and with the money, so borrowed, to pay said Rebecca—and that the amount would be \$1,800 before Rowan would be able to pay it.

ANSWER OF ROWAN OF 13TH OCTOBER, 1851.

91. On 13th October, 1851, Rowan filed a further answer to the said original bill for an account, in which he stated, as in his former answers, that he knew nothing of the condition of James Reid's estate further than appeared from the books of the Probate office, and the books and papers of James and Alex. Reid.

92. That Alex. Reid returned an inventory of notes and accounts due James Reid of.....\$5163 22³/₄
Also inventory of personalty..... 882 73
To which add, for excess of sale bill over appraisment bill..... 34 97
Making total from Probate books, with which Alex. Reid, as administrator of James Reid, is chargeable..... 6080 92³/₄

Also, Rowan found, among papers of Alex. Reid, notes due John Reid & Son, which appeared to be listed in a book of Alex. Reid—thinks they were not inventoried by Alex. Reid, because John Reid, as surviving partner, had the sole right to collect them.

92. Rowan also found, among papers of Alex. Reid, notes and accounts due James Reid—uncollected—\$2,766 ³⁶/₁₀₀.

93. Vouchers filed and allowed in Probate office \$1,845 ²⁸/₁₀₀—which two last named sums, with \$87 ⁷¹/₁₀₀ paid out by said Alex. in course of administration, but not reported or allowed, as also commission not before allowed \$12 ³⁵/₁₀₀, amount to \$4,711 ⁷⁰/₁₀₀, as credits to be taken from the aforesaid debits of \$6,080 ⁹²/₁₀₀, leaves a balance against Alex. Reid, as administrator of James Reid, of \$1,269 ²³/₁₀₀—to which should be added the further sum of \$205 ⁹³/₁₀₀, not reported, but which seemed to have been collected, making total balance against Alex. Reid of \$1,475 ¹³/₁₀₀. That the charges and credits, set forth in his previous answer of August 6th, 1850, were based upon estimates made by said Bowles, and Rowan believes they are not correct. Rowan believes the said \$87 ⁷¹/₁₀₀ was wholly omitted from his answer of August 6th, 1850, and that answer also omitted \$12 ³⁵/₁₀₀ due to Alex. Reid for commissions.

94. Rowan says James Reid collected, shortly before his death, large sums of money, which he believes came to the hands of said Eliza J., widow of James Reid.

He says that, since his answer of 6th August, 1850, he has been informed and believes that some of the accounts returned by Alex. Reid, as due James Reid, were collected by James Reid in his life time.

He believes that Bowles intended to overreach him in his computations on which said answer of August 6th, 1850, were based.

95. That, upon further examination of the books and papers of James and Alex. Reid, since his answer of August 6th, 1850, he believes that the sum of \$1,917 $\frac{16}{100}$ in said answer, admitted to be due from estate of Alex. Reid to estate of James Reid, is more than was actually due, as appears from this answer.

Since the answer of 6th August, 1850, Rowan has learned some of the items which he intended to make up the aggregate sum of \$146 $\frac{92}{100}$, which he, in said answer, admitted to have been collected, were collected by James Reid in his life time.

96. Rowan finds, from books and papers, that Alex. Reid, as guardian of Rebecca, received \$383 $\frac{62}{100}$, and paid out thereof \$32 $\frac{70}{100}$ —thus leaving said Alexander, at the time of his death, indebted, as guardian to said Rebecca, \$350 $\frac{92}{100}$.

He states that \$156 $\frac{75}{100}$, being one third of all the rents collected by Alex. Reid, was paid to said Eliza J., widow of Jas. Reid. Rowan, as administrator of Alex. Reid, paid to said Eliza J. \$18 $\frac{75}{100}$, also to her as natural guardian of said Rebecca \$24—and to Alex. Kirkpatrick as guardian \$171 $\frac{57}{100}$ —and to said Rebecca herself \$60—thus making \$274 $\frac{32}{100}$, paid by Rowan, on account of above amounts, supposed to be due from Alex. Reid to estate of Jas. Reid—and has also paid the further sum of \$22 for repairing the house occupied by said Eliza J.

97. States that Alex. Reid died in October, 1841—administration was granted the same year, and this bill, for an account, was filed 3d May, 1844—and sets up the two years limitation.

- 102-134. The vouchers filed by Rowan, as administrator of Alex. Reid, showing the payment of debts of said estate by him, show that they were all paid before the 3d March, 1844, the time of the filing of the bill for an account, with the following exceptions:

122.	Amount paid to Daniel Golden for use of hearse at funeral of Alex. Reid—	
	1st November, 1845,.....	\$ 5 00
122-3.	Amount paid to Rupert & Lindenberger—May 3rd, 1844,.....	38 06
123.	Amount paid Eddy & Posey, attorneys fees for defending the suit	
	for an account, &c.—13th December, 1845,.....	50 00
123-4.	Amount taxes paid on realty of Alex. Reid—15th December, 1845,	28 84
124-5.	Amount taxes paid on realty of Alex. Reid—31st October, 1844,	12 60
126.	Amount taxes paid on realty of Alex. Reid—22nd April, 1845,	7 50
126-7.	Taxes for 1845, on realty of Alex. Reid,.....	15 12
127.	Taxes for '45, on town lots,.....	11 20
127-8.	Taxes for '45, on lands in White County,.....	7 50
128.	Taxes for 1846, on town lots,.....	14 25
128-9.	Taxes for '46, on lands,.....	20 52
129.	Taxes for 1847,.....	9 24
129.	Taxes for '47, on Reid & Rowan's land,.....	8 37
130.	Taxes for 1848,.....	8 94
130.	Taxes for " on Reid & Rowan's land,.....	8 34
131	Taxes for 1849, on town lots,.....	14 05
"	Taxes for " on Reid & Rowan's land,.....	4 87
132-3.	Amount clerk's fees paid to J. E. Hall, 19th October, 1850,.....	3 70

133.	Taxes for 1850,.....	17 70
133.	Taxes for 1851, on Reid & Rowan's land,.....	4 21
134.	Amount clerk's fees to Hall—3rd February, 1851,.....	1 75

Making the entire sum, as shown by said vouchers, which Rowan paid out, as administrator of Alex. Reid, after the filing of said bill for an account—to wit: 3rd March, 1844—to be \$291 $\frac{76}{100}$ —of which aggregate sum, \$5 were for the hearse which attended the funeral of Alex. Reid; \$5 $\frac{45}{100}$ for fees paid to the clerk for costs arising in the course of administration; \$50 paid to Eddy & Posey as attorneys for the administrator in defending the interests of the estate; and \$37 $\frac{56}{100}$ paid upon the account of Rupert & Lindenberger, which seems, from the vouchers filed, to have been the only claim of the fourth class paid after 3rd March, 1844.

85. The record does not show that any summons issued upon the bill for an account, and Rowan's first answer to that bill was not filed until 29th October, 1844.

263. The decree of 2nd November, 1855, in the suit for a sale of the realty of Alex. Reid's estate to pay the decree of 2nd November, 1853, finds this fact: that, in paying out the assets of the estate of Alex. Reid, Rowan, the administrator, paid claims of the fourth class to the amount of \$935 $\frac{21}{100}$, and that all of said claims were paid subsequent to the filing of the bill in the suit for an account, and the service of process issued thereon, on which the decree of 2nd November, 1853, was entered.

263-4. The decree further finds that Alex. Reid died seized of certain real estate

265. That there was then due Bowles and wife, on said decree of 2nd November, 1853, the sum of \$4,563 $\frac{93}{100}$.

And due to Kirkpatrick and wife, the sum of \$729 $\frac{41}{100}$.

266. And the court being of opinion that the real estate of Alex. Reid is chargeable with the payment of all the just debts and claims against said estate, remaining unpaid, after the personal estate is exhausted, and it being unknown what amount the real estate would produce, when sold, reserved the questions as to the liability of said Rowan to pay Bowles and wife, and Kirkpatrick and wife, and the right of said parties to a decree for any part of the amount due them, as aforesaid, as preferred creditors, whose claims should have been paid as of the 3rd class, until the coming in of the report of the sales of the realty.

262. The decree also found that there were no personal assets in the hands of Rowan, as administrator of Alex. Reid.

266. The decree directs a sale of said realty to pay said decree of 2nd November, 1853, and directs that the proceeds of such sale be applied:

FIRST, To the payment of taxes on the premises sold, and to the redemption thereof from sales for taxes.

SECOND, To the payment of the costs of this suit—and

THIRD, To the payment of the amount due Bowles and wife, and Kirkpatrick and wife; and, if the proceeds of the sale should not be sufficient to pay the last named sums, then, the same to be divided between said parties in proportion to the amounts decreed.

267.

269. And the cause was continued for the further action of the court upon the questions not decided, and for the report of the commissioner.

90. In the answer of Rowan, of 6th August, 1850, to the original bill for an account, he states that Alex. Reid, during his last illness, told him

that he would owe Rebecca Reid (now said Rebecca Bowles) the sum of \$1800, before he, Rowan, would be able to pay it out of the estate.

140. Alex. Reid died in October, 1841.

Taking the \$1800 to be due to said Rebecca on 1st October, 1841, the interest thereon, at 6 per cent. per annum, from that time to the rendition of the decree of 2nd November, 1853, twelve years and one month, would amount to \$1305—making amount of principal and interest, according to that admission, due 2d November, 1853, to be \$3105—and interest thereon, from 2nd November, 1853, to sale of realty, 7th January, 1856, \$403 65—making, in all, according to such admission, due to said Rebecca, on 7th January, 1856, \$3508 65.

278. The report of the commissioner shows the gross proceeds of the sales of the realty to amount to \$3633 92. After deducting \$469 02 otherwise applied, leaves to be applied to the payment of the decree \$3164 90. The
280. commissioner paid out of that amount to Bowles and wife \$2797 47, and to
281. Kirkpatrick and wife \$453 08, and the action of the commissioner was approved by the court.

283. At the May Term, '57, Bowles and wife entered a motion for a decree against Rowan for the amount which he had paid out, as administrator of Alex. Reid, upon fourth class claims, after he had knowledge of the third class claim of Bowles and wife.

282. At the July term, following, that motion was overruled, upon the ground
289. that, as the decree of 2d Nov., 1855, was made by his predecessor, the proper mode of obtaining a decree, upon the questions reserved in the former decree, was by petition—and so the motion was disallowed, without prejudice.

284. At the July Term, 1857, Bowles and wife filed their petition, reciting the said decree of 2nd November, 1855, and the commissioners report of
287. sales of realty, showing the nett proceeds of said sales to have been \$3,164 $\frac{90}{100}$ —that the amount due Bowles and wife, on the day of such sale, was \$4,559 $\frac{53}{100}$ —and to Kirkpatrick and wife \$738 $\frac{52}{100}$ —that, out of the proceeds of said sale, there was paid to Bowles and wife \$2,724 $\frac{90}{100}$, and to Kirkpatrick and wife \$401 $\frac{33}{100}$ —that the balance due on said decree, on 7th January, 1856, was \$2,164 $\frac{90}{100}$, of which \$1,834 $\frac{62}{100}$ was due to Bowles and wife, and \$297 $\frac{19}{100}$ to Kirkpatrick and wife. The petition asks that Rowan be decreed to pay \$935 $\frac{21}{100}$, which he had improperly paid on fourth class claims—\$804 $\frac{84}{100}$ of that sum to Bowles and wife, and the residue,
288. \$130 $\frac{37}{100}$, to Kirkpatrick and wife, with interest from 7th January, 1856.

289. Subsequently, on the 31st October, 1857, the court entered a decree in
290. pursuance of said petition. It was thereby decreed that Rowan was liable to pay to Bowles and wife, and Kirkpatrick and wife, their proportional parts of the sum of \$935 $\frac{21}{100}$, with six per cent interest, from 7th January, 1856—that amount having been improperly paid out by him, as administrator of Alex. Reid, on fourth class claims, with knowledge of the existence of the third class claims of said parties; and the court ordered that Bowles and wife recover of Rowan \$889, their pro rata part of the said sum of \$935 $\frac{21}{100}$, including interest to date of this decree—and that Kirkpatrick and wife recover of Rowan \$144, their pro rata part of the same, including interest to date of this decree—and that Rowan pay the costs of this
291. suit, accruing since the entering of the motion, at the May Term, 1857.

N. L. FREEMAN, Attorney

for plaintiff in error.

IN THE SUPREME COURT OF THE STATE OF NEW YORK

and according since the entering of the motion at the May Term, 1831.
interest to date of this decree—and that Roman pay the costs of this
and wife recover of Roman \$144, their pro rata part of the same, including
\$332 ¹⁰⁰/₁₀₀, including interest to date of this decree—and that Kirkpatrick
and wife recover of Roman \$228, their pro rata part of the said sum of
of the third class claims of said parties: and the court ordered that Bowles
trustee of Alex. Reid, on fourth class claims, with knowledge of the existence
1826—that amount having been improperly paid out by him, as adminis-
trator of the sum of \$332 ¹⁰⁰/₁₀₀, with six per cent interest, from 1st January,
to pay to Bowles and wife, and Kirkpatrick and wife, their proportional
part of said portion. It was therefore decreed that Roman was liable
superiorly, on the 31st October, 1831, the court entered a decree in
\$130 ¹⁰⁰/₁₀₀ to Kirkpatrick and wife, with interest from 1st January, 1826,
class claims—\$204 ¹⁰⁰/₁₀₀ of that sum to Bowles and wife, and the residue,
Roman be decreed to pay \$332 ¹⁰⁰/₁₀₀, which he had improperly paid on fourth
and wife, and \$501 ¹⁰⁰/₁₀₀ to Kirkpatrick and wife. The petition asks that
1st January, 1826, was \$3104 ¹⁰⁰/₁₀₀, of which \$1834 ¹⁰⁰/₁₀₀ was due to Bowles
to Kirkpatrick and wife \$401 ¹⁰⁰/₁₀₀—that the balance due on said decree, on
proceeds of said sale, there was paid to Bowles and wife \$5154 ¹⁰⁰/₁₀₀, and
was \$1298 ¹⁰⁰/₁₀₀—and to Kirkpatrick and wife \$132 ¹⁰⁰/₁₀₀—that out of the
\$3104 ¹⁰⁰/₁₀₀—that the amount due Bowles and wife, on the day of such sale,
was of ready, growing the nett proceeds of said sales to have been
the said decree of 2nd November, 1822, and the commissioners report of
At the July Term, 1831, Bowles and wife filed their petition, reciting
was by petition—and so the motion was dismissed, without prejudice.
motion of Bowles and wife, upon the decree of 2nd November, 1822, and the report of
that as the decree of 2nd Nov. 1822, was made by his predecessor, the proper
At the July Term, following, that motion was dismissed, upon the ground
class claims of Bowles and wife.
Alex. Reid, upon fourth class claims, after he had knowledge of the third
against Roman for the amount which he had paid out, as administrator of
At the May Term, 31, Bowles and wife entered a motion for a decree
approved by the court.
Kirkpatrick and wife \$193 08, and the action of the commissioners was
commissioners paid out of that amount to Bowles and wife \$5154 ¹⁰⁰/₁₀₀, and to
apportioned to be applied to the payment of the decree of 2nd Nov. 1822.
of the 1st July to amount to \$3033 03. After deducting \$100 ¹⁰⁰/₁₀₀ of said
The report of the commissioners shows the Gross Proceeds of the sales
January, 1826, \$3208 02.
making, in all, according to such admission, due to said Roman, of 1st
from 2nd November, 1822, to date of ready, 1st January, 1826, \$403 02—
the amount of said sum, with interest, from that time to the said
amount to \$1300—making amount of principal and interest, according to
of the decree of 2nd November, 1822, twelve years and one month, month
interest thereon, at 6 per cent per annum, from that time to the rendition
Taking the \$1200 to be due to said Decree on 1st October, 1841, the
Alex. Reid died in October, 1841.
\$1200, before he, Roman, would be able to pay it out of the estate,
that he would owe Decreee Reid (now said Decreee Bowles) the sum of

581
580
583
588

581
584

580
583

583

581
580

518

140

Bowles & wife et al

Abstract

Plan 30. Nov. 1857
N. G. Brewster, Clerk

Bowles

vs

STEPHEN R. ROWAN, and NANCY ANN ROWAN, his wife, Appellants,

v s.

JOHN REED, Jr., JOSEPH BOWLES, and REBECCA BOWLES, his wife, ANDREW McCALLEN, and MARY ANN McCALLEN, his wife, and JOSEPHINE, MARY, and ANDREW J. McCALLEN, Appellees.

IN THE SUPREME COURT, STATE OF ILLINOIS, FIRST
GRAND DIVISION, NOVEMBER TERM, A. D., 1857.

Abstract of Appellants' Case.

Page.

1.

The appellants filed their bill at the October Term, 1855, of the Gallatin Circuit Court, against the appellees, alleging that John Reed, Sr., the father of complainant, Nancy Ann, died seized of certain real estate, described in complainants' bill, leaving Margaret Reed, his widow, and the complainant, Nancy Ann, and John Reed, Jr., children of the said John Reed, Sr., and Alexander Reed, grandson, and Rebecca Bowles, the granddaughter of said John Reed, Sr., who is now the wife of Joseph Bowles, his only heirs at law him surviving, to whom the said real estate descended, subject to the dower of the said Margaret Reed, widow.

2.

3.

4.

5.

That said Alexander Reed afterwards died, leaving Mary Ann McCallen, his mother, who is the wife of Andrew McCallen, and Mary, Josephine and Andrew J. McCallen, the half-brother and half-sisters of said Alexander Reed, heir and heiresses at law, to whom his interest in the lands of John Reed, deceased, immediately descended, and vested, in the proportions following, viz: To the complainants, in right of the said Nancy Ann, one fourth—to the said Joseph Bowles and wife, in right of the said Rebecca, one fourth—to the said John Reed, Jr., one fourth—to the said Andrew and Mary Ann McCallen, one undivided tenth part, and to the said Mary, Josephine and Andrew J. McCallen, one twentieth part of said premises, each—the said Mary Ann, Josephine, Mary and Andrew J., being seized of one undivided fourth of said premises, as heirs of said Alexander Reed—the said Mary, Josephine and Andrew J. being infants.

6.

That a brick dwelling house was built by complainant, Stephen, upon the homestead farm of the said John Reed, Sr., deceased, at the request of the said Margaret Reed, widow, whose dower had never been set apart to her, and who occupied the said homestead farm after the death of her husband until the filing of this bill, and that the said brick house was indispensable to the comfort of the said Margaret Reed, widow, the dwelling house that was on the homestead of the deceased being in a dilapidated condition, and unfit for her to live in.

That said Rowan also cleared 40 acres of ground on said farm, at an expense of \$200, and also had 200 rods of ditching done on said farm at a cost of \$60, and enhanced the value of the inheritance to the extent of \$1060, or more; and also made an improvement on the Nettle Bottom farm part of the real estate, of which said Reed died seized, worth about \$50,—said improvements being a double log cabin, and, at the time of filing complainants' bill, occupied by Andrew McCallen, one of the defend-

ants therein—all which said improvements were made with the approbation and knowledge of the defendants, and were necessary and proper, and indispensable to the enjoyment of the said estate—which said improvements and expenditures complainants claim that the defendants should, in equity, contribute towards liquidating, before partition be made, or that the portion of the said real estate, on which said improvements were made, should be set apart to complainants, without account for the enhanced value thereof, but which equitable contribution the said defendants refused to make, and, instead of so doing, have presented their petition, on the common law side of the court, praying a legal partition of the said real estate, without any regard to the equities of complainants therein.

The complainants prayed that a commission of partition be issued out of chancery, to assign the dower of the said Margaret Reed, widow, in the said lands, and to make an equitable partition thereof, among the complainants and the other parties in interest, and that the complainant, Stephen, be allowed what was right for his expenditures as aforesaid, or that there might be allotted him and his said wife, for their share of said estate, that portion of the lands, of the said Reed, deceased, on which said improvements were made, and that the said Joseph and Rebecca Bowles, and Andrew and Mary Ann McCallen, and Mary, Josephine and Andrew J. McCallen, might be made defendants' guardians AD LITEM, appointed for said infants, and that an injunction issue, restraining said defendants from proceeding at law with said suit for partition.

Which is the substance of the bill of complainants, which was sworn to by complainant, Stephen R. Rowan, as required by law, and the defendants called upon to answer the bill without oath.

At the same term of court, separate answers were filed by Joseph Bowles and wife, and Andrew McCallen and wife—the answer of the said McCallen and wife being, in effect, on behalf of the minors as well as himself and wife, but no answer appears to have been filed, in form, for, or on behalf of the minor children of said Andrew and wife.

The answer of Bowles and wife deny all the equities of complainants, but admit that they have filed their petition for partition at law, and insist upon it, as a defense to the relief sought for, that complainants enjoyed the profits of the home farm, and occupied the brick house, which, they aver, more than compensated complainants for any outlay by complainant, Stephen—also deny that said improvements were made by their consent, &c., or that they knew of said improvements, and also allege that the defendants, Mary, Josephine and Andrew J. McCallen, were minors, and could not consent.

The answers of McCallen and wife were to the same effect—to which answers a general replication was filed.

The defendants gave complainants notice that they would present their answers, denying the allegations in complainants' bill, together with affidavits, and filed the affidavits of the following persons, viz:

AARON R. STOUT,

JAMES BEASLEY, and

ALEXANDER KIRKPATRICK,

Page.

35.

the complainants having, also, in support of their bill, filed the affidavits of the following named persons, viz:

36.

HENRY GILL,

39.

H. H. THOMASSON, and

MARGARET REED,

44.

and, at the October Term, A. D., 1855, of the Circuit Court of Gallatin County, the complainants moved for an injunction, as prayed for in their bill, and, at a court, held on the 1st November, 1856, the said Circuit Court, after the cause being submitted on bill, answers, replication, and the affidavits on file, on behalf of complainants and defendants, the court overruled the motion and dismissed the bill at complainants' cost.

Whereupon the complainants appealed to this court, which appeal was allowed, by consent of parties, without giving bond, the cause to stand for a hearing at the ensuing term of the Supreme Court, to be held in November, 1856, at Mt. Vernon, the same as though thirty days had intervened between the time of making said appeal and the sitting of said Supreme Court.

The said affidavits, also, by agreement, were to be considered as depositions.

Reversal of decree to operate as an injunction, according to prayer of bill.

Proceedings at law to be stayed until the further order of the court therein.

47.

48.

And now the complainants seek to reverse the decree of the Circuit Court of Gallatin County, for the following errors assigned upon the record:

1st, That the court erred in overruling complainants' motion for an injunction.

2nd, Because the court erred in dismissing complainants' bill, at their cost, and

3rd, Because the court erred in overruling said motion for an injunction, dismissing said bill, and in not granting the relief prayed for.

NELSON & JOHNSON, for

Appellants.

.....
J. W. EDWARDS, PRINTER, SHAWNEETOWN.
.....

No 50
Horseman et al
in
Bowles et al

8520

Page 32

IN SENATE, JANUARY 1857.

Appellants

WILSON & JOHNSON, vs.

motion, dismissing said bill, and in not granting the relief prayed for.

3rd. Because the court erred in overruling said motion for an injunction, and

3rd. Because the court erred in dismissing complainants' bill, at their suggestion.

1st. That the court erred in overruling complainants' motion for an

48. Court of Chancery County, for the following errors assigned upon the record:

41. And now the complainants seek to reverse the decree of the Circuit Court, therein.

Proceedings at law to be stayed until the further order of the

reversal of decree to operate as an injunction, according to the order of bill, depositions.

The said bill, which, by agreement, were to be considered as

Superior Court, intervened before the time of making said appeal and

November, 1856, at the term of the said court, the same was taken

for a hearing, and the ensuing term of the Superior Court, the same

allowed, by consent of parties, without giving bond, and the same

Whereupon the complainants applied to this court, for an order

granting the motion, and dismissing the bill, as complainants' counsel

submitted on the behalf of complainants and defendants, the court over

Court, after the case being submitted on bill, answer, deposition, and the

bill, and as a court held on the 1st December, 1856, the said Circuit

Court, the complainants moved for an injunction, as prayed for in their

and at the October Term, V. D. 1856, of the Circuit Court of Chancery

Maestri, Hays,
H. H. Thompson, and
Hays, and
the following named parties, viz:
the complainants and their counsel, and the defendants and their counsel.

Copied for Extract

Abstract

Filed Nov. 1857.

J. H. Thompson

C. H. Hays

STATE OF ILLINOIS—IN THE SUPREME COURT—FIRST
GRAND DIVISION—OF NOVEMBER TERM, 1857.

STEPHEN R. ROWAN, Plaintiff in Error,	}	Error to Gallatin.
v s.		
JOSEPH BOWLES and REBECCA BOWLES, his wife, and	}	Abstract of Plain-
ALEXANDER KIRKPATRICK and ELIZA J. KIRKPATRICK,		tiff in Error.
his wife, Defendants in Error.	}	

Pages of
Record.

1. This was a bill in chancery, filed in the Circuit Court of Gallatin County, on the 27th April, 1854, by Joseph Bowles, and wife, against Stephen R. Rowan, Administrator of Alexander Reid, deceased, Andrew McCallen and Mary Ann McCallen, his wife, Josephine McCallen, Mary McCallen and Andrew J. McCallen, heirs of Alex. Reid deceased, Alexander Kirkpatrick and Eliza J. Kirkpatrick, his wife, stating, in substance, that, at the special October term, 1853, of said court, in a suit in chancery, pending therein, between said Bowles and wife, and Kirkpatrick and wife, complainants, against said Rowan, Administrator of Alex. Reid, deceased, and administrator DE BONIS NON of James Reid, deceased, a decree was made in favor of Bowles and wife, for \$3,963 ⁵⁷/₁₀₀ and \$61 ³⁰/₁₀₀ costs, payable out of the estate of Alex. Reid, and in favor of Kirkpatrick and wife for \$651 ²⁶/₁₀₀, payable out of said estate, which had not been inventoried or accounted for before the commencement of said suit, which sums were found to be due from the estate of Alex. Reid, on a settlement of his accounts, as administrator of James Reid, deceased.
3. That Rowan claims the personal estate of Alex. Reid has been exhausted in paying other debts, and that he has no assets to pay decree.
3. That Rowan filed with the Court of Probate a list of lands of which Alex. Reid died seized—describing the lands.
4. That the true time of filing said list is unknown to complainants.
- 4-6. The bill charges that Alex. Reid died seized of certain real estate, which is described.
6. That Rowan says he has paid all the claims against estate of Alex. Reid, except those in favor of Bowles and wife and Kirkpatrick and wife, which remain unpaid.
7. The bill charges that Bowles and wife are entitled to the payment of the amount due them upon said decree out of estate inventoried by said Rowan before the commencement of the suit in which said decree was entered, and that Kirkpatrick and wife are entitled to be paid out of estate not so inventoried, and not accounted for by Rowan, administrator, and that an equitable lien exists upon said estate for the payment of said claims.
8. That Rowan has failed to pay the decree, or to sell the realty to pay it.
9. That Rowan has allowed a part of said realty to be sold for taxes.
9. That there is not a sufficiency of the personal estate of Alex. Reid to pay all the debts.
11. The Bill prays that the heirs of Alex. Reid be decreed to pay said decree, and, if they do not, that said realty be sold for that purpose.
- 17-24-35 The answers of the infant defendants, by their guardian, ad litem, were filed.
- 46-51. Also, the answer of Rowan, and the answer of Kirkpatrick and wife,
- 53-4. and the issue being joined, the cause was heard upon the following evidence:

FIRST—The decree which was rendered in the suit for an account, on 2nd November, 1853.

72.

That decree directs Rowan, as administrator of Alex. Reid, out of assets of said estate, (if any there were), which might have been discovered since the commencement of that suit, (which was on 3d March, 1844—see page of record, 80), or which might thereafter be discovered, to pay to Kirkpatrick and wife the sum of \$651 $\frac{26}{100}$, which was found to be due them from the estate of Alex. Reid: and that out of any of said estate, then in his hands, or which might thereafter come to his hands, he should pay to Bowles and wife the sum of \$3963 $\frac{51}{100}$ and costs of suit.

70.

Said decree found that said Eliza J. Kirkpatrick, who was the widow of James Reid, was sole and unmarried at the time of granting letters of administration upon the estate of Alex. Reid, and that more than two years elapsed from the granting of said letters until the presentation of her claim against said estate, and that her claim was forever barred, except as against assets discovered (or to be discovered) after the commencement of that suit.

The decree found the sums, as above directed to be paid, due to said Eliza Jane Kirkpatrick and Rebecca Bowles, from the estate of Alex. Reid, for moneys, &c., which had come to his hands as administrator of James Reid, of whose estate said Eliza J. and Rebecca were distributees.

71.

Rowan filed three answers to original bill for an account, as follows:

80.

ANSWER OF ROWAN OF 29TH OCTOBER, 1844.

81.

On 29th October, 1844, Rowan answered the original bill for an account, as follows: That he knew nothing of the condition of James Reid's estate further than appeared from the files and books of the Probate office of Gallatin County, and the books and papers of Alex. Reid—that he found that Alex. Reid returned an inventory of debts, notes and accounts due estate of James Reid, as follows:

Good \$73 $\frac{37\frac{1}{2}}{100}$; Doubtful \$2,572 $\frac{37\frac{1}{2}}{100}$; Desperate \$2,517 $\frac{47}{100}$; and that he collected and made returns to said office, at three different settlements, all of the good debts, say \$73 $\frac{37}{100}$, and \$1,372 $\frac{88\frac{1}{2}}{100}$ of the doubtful debts, leaving uncollected on 7th October, 1833, the date of the last settlement, of the doubtful debts \$1,199 $\frac{49}{100}$, and all of the desperate.

82.

That Alex. Reid appeared to be further chargeable with the amount of the sale bill of James Reid's Estate, \$917 $\frac{70\frac{1}{2}}{100}$.

Making total of everything, collected by Alex. Reid, of James Reid's estate:—\$2,363 $\frac{96\frac{1}{2}}{100}$.

That respondent, since he became administrator of Alex. Reid, has returned to Probate office other collections made by Alex. Reid, as administrator of James Reid, taken from a small square book of Alex. Reid's, amounting to \$205 $\frac{93}{100}$, and taken a credit for vouchers filed to the amount of \$97 $\frac{75}{100}$ —thus leaving a further sum of \$108 $\frac{18}{100}$, to be added to the said sum of \$2,363 $\frac{96}{100}$ —making \$2,472 $\frac{14}{100}$, for which Alex. Reid would appear to be chargeable as administrator of James Reid.

83.

Against this aggregate sum Rowan claims a credit for Alex. Reid of \$——, paid out in course of administration, and allowed by Probate Court—and for the further sum of \$70 $\frac{12\frac{1}{2}}{100}$, paid to Alex. Reid as guardian for Rebecca Reid. Besides \$70 $\frac{12\frac{1}{2}}{100}$, there also came to hands of Alex. Reid, as such guardian, \$313 $\frac{15}{100}$, being said Rebecca's share of rents of town lot of which James Reid died seized.

Thus making \$383 $\frac{62\frac{1}{2}}{100}$, which came to the hands of Alex. Reid as such guardian, upon which sum Rowan claims a credit of \$32 $\frac{70}{100}$ paid out by said guardian, leaving \$350 $\frac{92\frac{1}{2}}{100}$ balance in the hands of Alex. Reid, as guardian, at the time of his death.

84. That \$156 $\frac{75}{100}$, being one third of all the rents collected, was paid over to said Eliza J. Kirkpatrick, as widow of James Reid.

85. Rowan says that none of the estate of James Reid ever came to his hands, but that he paid over to said Eliza J. and the guardian of said Rebecca, \$90 $\frac{20}{100}$ out of assets of estate of Alex. Reid—to wit, to said Eliza J. \$65 $\frac{20}{100}$, and to Alex. Kirkpatrick, guardian, \$25.

ANSWER OF ROWAN OF 6TH AUGUST, 1850.

86. On the 6th August, 1850, Rowan, administrator of James Reid, filed a further answer to said original bill for an account, as follows:

That he knew nothing of the condition of James Reid's estate further than appeared from the files and books of the Probate office, and the books and papers of James Reid, and the books and papers of Alex. Reid.

That he finds that Alex. Reid returned an inventory of debts, notes and accounts, due James Reid's estate, as follows:

87. Good \$73 $\frac{37\frac{1}{2}}{100}$; Doubtful \$2,572 $\frac{37\frac{1}{2}}{100}$; Desperate \$2,517 $\frac{47\frac{1}{2}}{100}$; and that Alex. Reid returned a sale bill of personalty of James Reid for \$917 $\frac{70}{100}$. Also, that Rowan found among papers of Alex. Reid, evidence of notes due to John Reid and James Reid, under the firm of John Reid & Son, having come to hands of Alex. Reid as administrator of James Reid, amounting to \$217, one half of which were due to James Reid. Also, Alex. Reid returned an inventory of personalty of James Reid of \$882 $\frac{73}{100}$ —and for debts, not reported, and which appeared from books of James Reid to be due, the sum of \$158 $\frac{98}{100}$. Making in all, with which Alex. Reid, as administrator of James Reid, was chargeable, including doubtful and desperate debts, the sum of \$7,231 $\frac{13\frac{1}{2}}{100}$.

Rowan also found, among the papers of Alex. Reid, notes due to James Reid, yet uncollected, for \$701 $\frac{62}{100}$.

88. Also, notes, due to John Reid & Son, uncollected, for \$116 $\frac{50}{100}$, one half of which is,.....\$ 58 25

Also amount of uncollected accounts,..... 1825 99

Also vouchers filed, and for which Alex. Reid received a credit on

Probate books, for..... 1845 28

Also inventory of personalty, charged above,..... 882 73

Making, in all, of credits, to which estate of Alex. Reid is entitled, 5313 97

Leaving due the estate of Jas. Reid, from the estate of Alex. Reid, 1917 16

Rowan finds, from books and papers of Alex. Reid, that he received

as guardian of said Rebecca Reid, for rents and claims due, 383 62

Rowan also says that, of said debts, which were uncollected, he thinks \$146 $\frac{92}{100}$ could have been collected; as to remainder, he cannot say. He, Rowan, has not endeavored to collect them since they came to his hands, because he could not prove them—and they were of ten years standing—

89. And he had not endeavored to collect the notes due Jas. Reid, as he did not know, until recently, that he had them.

89. As to condition of Alex. Reid's estate, Rowan says the amount of sale bill is.....\$ 678 27 $\frac{1}{2}$

Amount of debts collected and reported to Probate office..... 466 41

Amount collected and not reported.....	— —
Debts due the estate—doubtful.....	683 00
Accounts and notes.....	185 62
Desperate accounts.....	4442 47
Notes.....	357 25

90. Rowan says that, as to the application of the funds of estate of James Reid, or the funds of said Rebecca, by said Alex. Reid, to his own use, he knows nothing, except what Alex. Reid told him, during his last illness, which was, that he, Alex. Reid, had used the money of said Rebecca, and could not have got along without it, and also requested Rowan to borrow money and mortgage real estate of said Alex. Reid to secure its re-payment—and with the money, so borrowed, to pay said Rebecca—and that the amount would be \$1,800 before Rowan would be able to pay it.

ANSWER OF ROWAN OF 13TH OCTOBER, 1851.

91. On 13th October, 1851, Rowan filed a further answer to the said original bill for an account, in which he stated, as in his former answers, that he knew nothing of the condition of James Reid's estate further than appeared from the books of the Probate office, and the books and papers of James and Alex. Reid.

92. That Alex. Reid returned an inventory of notes and accounts due James Reid of.....\$5163 22³/₄
Also inventory of personalty..... 882 73
To which add, for excess of sale bill over appraisment bill,..... 34 97
Making total from Probate books, with which Alex. Reid, as ad-

ministrator of James Reid, is chargeable..... 6080 92³/₄

Also, Rowan found, among papers of Alex. Reid, notes due John Reid & Son, which appeared to be listed in a book of Alex. Reid—thinks they were not inventoried by Alex. Reid, because John Reid, as surviving partner, had the sole right to collect them.

92. Rowan also found, among papers of Alex. Reid, notes and accounts due James Reid—uncollected—\$2,766 ³⁶/₁₀₀.

93. Vouchers filed and allowed in Probate office \$1,845 ²⁸/₁₀₀—which two last named sums, with \$87 ^{71¹/₂}/₁₀₀ paid out by said Alex. in course of administration, but not reported or allowed, as also commission not before allowed \$12 ³⁵/₁₀₀, amount to \$4,711 ^{70¹/₂}/₁₀₀, as credits to be taken from the aforesaid debits of \$6,080 ^{92³/₄}/₁₀₀, leaves a balance against Alex. Reid, as administrator of James Reid, of \$1,269 ^{23¹/₂}/₁₀₀—to which should be added the further sum of \$205 ^{93¹/₂}/₁₀₀, not reported, but which seemed to have been collected, making total balance against Alex. Reid of \$1,475 ^{13¹/₂}/₁₀₀. That the charges and credits, set forth in his previous answer of August 6th, 1850, were based upon estimates made by said Bowles, and Rowan believes they are not correct. Rowan believes the said \$87 ^{71¹/₂}/₁₀₀ was wholly omitted from his answer of August 6th, 1850, and that answer also omitted \$12 ³⁵/₁₀₀ due to Alex. Reid for commissions.

94. Rowan says James Reid collected, shortly before his death, large sums of money, which he believes came to the hands of said Eliza J., widow of James Reid.

He says that, since his answer of 6th August, 1850, he has been informed and believes that some of the accounts returned by Alex. Reid, as due James Reid, were collected by James Reid in his life time.

He believes that Bowles intended to overreach him in his computations on which said answer of August 6th, 1850, were based.

95. That, upon further examination of the books and papers of James and Alex. Reid, since his answer of August 6th, 1850, he believes that the sum of \$1,917 $\frac{16}{100}$ in said answer, admitted to be due from estate of Alex. Reid to estate of James Reid, is more than was actually due, as appears from this answer.

Since the answer of 6th August, 1850, Rowan has learned some of the items which he intended to make up the aggregate sum of \$146 $\frac{92}{100}$, which he, in said answer, admitted to have been collected, were collected by James Reid in his life time.

96. Rowan finds, from books and papers, that Alex. Reid, as guardian of Rebecca, received \$383 $\frac{62}{100}$, and paid out thereof \$32 $\frac{70}{100}$ —thus leaving said Alexander, at the time of his death, indebted, as guardian to said Rebecca, \$350 $\frac{92}{100}$.

He states that \$156 $\frac{75}{100}$, being one third of all the rents collected by Alex. Reid, was paid to said Eliza J., widow of Jas. Reid. Rowan, as administrator of Alex. Reid, paid to said Eliza J. \$18 $\frac{75}{100}$, also to her as natural guardian of said Rebecca \$24—and to Alex. Kirkpatrick as guardian \$171 $\frac{57}{100}$ —and to said Rebecca herself \$60—thus making \$274 $\frac{32}{100}$, paid by Rowan, on account of above amounts, supposed to be due from Alex. Reid to estate of Jas. Reid—and has also paid the further sum of \$22 for repairing the house occupied by said Eliza J.

97. States that Alex. Reid died in October, 1841—administration was granted the same year, and this bill, for an account, was filed 3d May, 1844—and sets up the two years limitation.

- 102-134. The vouchers filed by Rowan, as administrator of Alex. Reid, showing the payment of debts of said estate by him, show that they were all paid before the 3d March, 1844, the time of the filing of the bill for an account, with the following exceptions:

122.	Amount paid to Daniel Golden for use of hearse at funeral of Alex. Reid— 1st November, 1845,.....	\$ 5 00
122-3.	Amount paid to Rupert & Lindenberger—May 3rd, 1844,.....	38 06
123.	Amount paid Eddy & Posey, attorneys fees for defending the suit for an account, &c.—13th December, 1845,.....	50 00
123-4.	Amount taxes paid on realty of Alex. Reid—15th December, 1845,	28 84
124-5.	Amount taxes paid on realty of Alex. Reid—31st October, 1844,	12 60
126.	Amount taxes paid on realty of Alex. Reid—22nd April, 1845,	7 50
126-7.	Taxes for 1845, on realty of Alex. Reid,.....	15 12
127.	Taxes for '45, on town lots,.....	11 20
127-8.	Taxes for '45, on lands in White County,.....	7 50
128.	Taxes for 1846, on town lots,.....	14 25
128-9.	Taxes for '46, on lands,.....	20 52
129.	Taxes for 1847,.....	9 24
129.	Taxes for '47, on Reid & Rowan's land,.....	8 37
130.	Taxes for 1848,.....	8 94
130.	Taxes for " on Reid & Rowan's land,.....	8 34
131	Taxes for 1849, on town lots,.....	14 05
"	Taxes for " on Reid & Rowan's land,.....	4 87
132-3.	Amount clerk's fees paid to J. E. Hall, 19th October, 1850,.....	3 70

133.	Taxes for 1850,.....	17 70
133.	Taxes for 1851, on Reid & Rowan's land,.....	4 21
134.	Amount clerk's fees to Hall—3rd February, 1851,.....	1 75

Making the entire sum, as shown by said vouchers, which Rowan paid out, as administrator of Alex. Reid, after the filing of said bill for an account—to wit: 3rd March, 1844—to be \$291 $\frac{76}{100}$ —of which aggregate sum, \$5 were for the hearse which attended the funeral of Alex. Reid; \$5 $\frac{45}{100}$ for fees paid to the clerk for costs arising in the course of administration; \$50 paid to Eddy & Posey as attorneys for the administrator in defending the interests of the estate; and \$37 $\frac{66}{100}$ paid upon the account of Rupert & Lindenberger, which seems, from the vouchers filed, to have been the only claim of the fourth class paid after 3rd March, 1844.

85. The record does not show that any summons issued upon the bill for an account, and Rowan's first answer to that bill was not filed until 29th October, 1844.

263. The decree of 2nd November, 1855, in the suit for a sale of the realty of Alex. Reid's estate to pay the decree of 2nd November, 1853, finds this fact: that, in paying out the assets of the estate of Alex. Reid, Rowan, the administrator, paid claims of the fourth class to the amount of \$935 $\frac{31}{100}$, and that all of said claims were paid subsequent to the filing of the bill in the suit for an account, and the service of process issued thereon, on which the decree of 2nd November, 1853, was entered.

263-4. The decree further finds that Alex. Reid died seized of certain real estate

265. That there was then due Bowles and wife, on said decree of 2nd November, 1853, the sum of \$4,563 $\frac{93}{100}$.

And due to Kirkpatrick and wife, the sum of \$729 $\frac{41}{100}$.

266. And the court being of opinion that the real estate of Alex. Reid is chargeable with the payment of all the just debts and claims against said estate, remaining unpaid, after the personal estate is exhausted, and it being unknown what amount the real estate would produce, when sold, reserved the questions as to the liability of said Rowan to pay Bowles and wife, and Kirkpatrick and wife, and the right of said parties to a decree for any part of the amount due them, as aforesaid, as preferred creditors, whose claims should have been paid as of the 3rd class, until the coming in of the report of the sales of the realty.

262. The decree also found that there were no personal assets in the hands of Rowan, as administrator of Alex. Reid.

266. The decree directs a sale of said realty to pay said decree of 2nd November, 1853, and directs that the proceeds of such sale be applied:

FIRST, To the payment of taxes on the premises sold, and to the redemption thereof from sales for taxes.

SECOND, To the payment of the costs of this suit—and

THIRD, To the payment of the amount due Bowles and wife, and Kirkpatrick and wife; and, if the proceeds of the sale should not be sufficient to pay the last named sums, then, the same to be divided between said parties in proportion to the amounts decreed.

267.

269. And the cause was continued for the further action of the court upon the questions not decided, and for the report of the commissioner.

90. In the answer of Rowan, of 6th August, 1850, to the original bill for an account, he states that Alex. Reid, during his last illness, told him

that he would owe Rebecca Reid (now said Rebecca Bowles) the sum of \$1800, before he, Rowan, would be able to pay it out of the estate.

140. Alex. Reid died in October, 1841.

Taking the \$1800 to be due to said Rebecca on 1st October, 1841, the interest thereon, at 6 per cent. per annum, from that time to the rendition of the decree of 2nd November, 1853, twelve years and one month, would amount to \$1305—making amount of principal and interest, according to that admission, due 2d November, 1853, to be \$3105—and interest thereon, from 2nd November, 1853, to sale of realty, 7th January, 1856, \$403 65—making, in all, according to such admission, due to said Rebecca, on 7th January, 1856, \$3508 65.

278. The report of the commissioner shows the gross proceeds of the sales of the realty to amount to \$3633 92. After deducting \$469 02 otherwise applied, leaves to be applied to the payment of the decree \$3164 90. The
280. commissioner paid out of that amount to Bowles and wife \$2797 47, and to
281. Kirkpatrick and wife \$453 08, and the action of the commissioner was approved by the court.

283. At the May Term, '57, Bowles and wife entered a motion for a decree against Rowan for the amount which he had paid out, as administrator of Alex. Reid, upon fourth class claims, after he had knowledge of the third class claim of Bowles and wife.

282. At the July term, following, that motion was overruled, upon the ground
289. that, as the decree of 2d Nov., 1855, was made by his predecessor, the proper mode of obtaining a decree, upon the questions reserved in the former decree, was by petition—and so the motion was disallowed, without prejudice.

284. At the July Term, 1857, Bowles and wife filed their petition, reciting the said decree of 2nd November, 1855, and the commissioners report of
287. sales of realty, showing the nett proceeds of said sales to have been \$3,164 $\frac{90}{100}$ —that the amount due Bowles and wife, on the day of such sale, was \$4,559 $\frac{53}{100}$ —and to Kirkpatrick and wife \$738 $\frac{52}{100}$ —that, out of the proceeds of said sale, there was paid to Bowles and wife \$2,724 $\frac{90}{100}$, and to Kirkpatrick and wife \$401 $\frac{33}{100}$ —that the balance due on said decree, on 7th January, 1856, was \$2,164 $\frac{90}{100}$, of which \$1,834 $\frac{62}{100}$ was due to Bowles and wife, and \$297 $\frac{19}{100}$ to Kirkpatrick and wife. The petition asks that Rowan be decreed to pay \$935 $\frac{21}{100}$, which he had improperly paid on fourth class claims—\$804 $\frac{84}{100}$ of that sum to Bowles and wife, and the residue,
288. \$130 $\frac{37}{100}$, to Kirkpatrick and wife, with interest from 7th January, 1856.

289. Subsequently, on the 31st October, 1857, the court entered a decree in
290. pursuance of said petition. It was thereby decreed that Rowan was liable to pay to Bowles and wife, and Kirkpatrick and wife, their proportional parts of the sum of \$935 $\frac{21}{100}$, with six per cent interest, from 7th January, 1856—that amount having been improperly paid out by him, as administrator of Alex. Reid, on fourth class claims, with knowledge of the existence of the third class claims of said parties; and the court ordered that Bowles and wife recover of Rowan \$889, their pro rata part of the said sum of \$935 $\frac{21}{100}$, including interest to date of this decree—and that Kirkpatrick and wife recover of Rowan \$144, their pro rata part of the same, including interest to date of this decree—and that Rowan pay the costs of this
291. suit, accruing since the entering of the motion, at the May Term, 1857.

N. L. FREEMAN, Attorney

for plaintiff in error.

15

22

Bowles & wife chal

Abstract

859

A close-up photograph of a document page. A large, stylized blue ink signature or stamp is written diagonally across the page. The signature appears to be 'H. C. 12'. The background text is faint and mostly illegible, but some words like 'H. C. 12' and 'H. C. 12' are visible, suggesting a repeating pattern or a specific document type.

1000

Feb. 20. Nov. 1857

Johnston M

STEPHEN R. ROWAN, and NANCY ANN ROWAN, his wife, Appellants,

v s.

JOHN REED, Jr., JOSEPH BOWLES, and REBECCA BOWLES, his wife, ANDREW McCALLEN, and MARY ANN McCALLEN, his wife, and JOSEPHINE, MARY, and ANDREW J. McCALLEN, Appellees.

IN THE SUPREME COURT, STATE OF ILLINOIS, FIRST
GRAND DIVISION, NOVEMBER TERM, A. D., 1857.

Abstract of Appellants' Case.

Page.

1.

The appellants filed their bill at the October Term, 1855, of the Gallatin Circuit Court, against the appellees, alleging that John Reed, Sr., the father of complainant, Nancy Ann, died seized of certain real estate, described in complainants' bill, leaving Margaret Reed, his widow, and the complainant, Nancy Ann, and John Reed, Jr., children of the said John Reed, Sr., and Alexander Reed, grandson, and Rebecca Bowles, the granddaughter of said John Reed, Sr., who is now the wife of Joseph Bowles, his only heirs at law him surviving, to whom the said real estate descended, subject to the dower of the said Margaret Reed, widow.

2.

3.

4.

5.

That said Alexander Reed afterwards died, leaving Mary Ann McCallen, his mother, who is the wife of Andrew McCallen, and Mary, Josephine and Andrew J. McCallen, the half-brother and half-sisters of said Alexander Reed, heir and heiresses at law, to whom his interest in the lands of John Reed, deceased, immediately descended, and vested, in the proportions following, viz: To the complainants, in right of the said Nancy Ann, one fourth—to the said Joseph Bowles and wife, in right of the said Rebecca, one fourth—to the said John Reed, Jr., one fourth—to the said Andrew and Mary Ann McCallen, one undivided tenth part, and to the said Mary, Josephine and Andrew J. McCallen, one twentieth part of said premises, each—the said Mary Ann, Josephine, Mary and Andrew J., being seized of one undivided fourth of said premises, as heirs of said Alexander Reed—the said Mary, Josephine and Andrew J. being infants.

6.

That a brick dwelling house was built by complainant, Stephen, upon the homestead farm of the said John Reed, Sr., deceased, at the request of the said Margaret Reed, widow, whose dower had never been set apart to her, and who occupied the said homestead farm after the death of her husband until the filing of this bill, and that the said brick house was indispensable to the comfort of the said Margaret Reed, widow, the dwelling house that was on the homestead of the deceased being in a dilapidated condition, and unfit for her to live in.

That said Rowan also cleared 40 acres of ground on said farm, at an expense of \$200, and also had 200 rods of ditching done on said farm at a cost of \$60, and enhanced the value of the inheritance to the extent of \$1060, or more; and also made an improvement on the Nettle Bottom farm part of the real estate, of which said Reed died seized, worth about \$50,—said improvements being a double log cabin, and, at the time of filing complainants' bill, occupied by Andrew McCallen, one of the defend-

- Page. 7. ants therein—all which said improvements were made with the approbation and knowledge of the defendants, and were necessary and proper, and indispensable to the enjoyment of the said estate—which said improvements and expenditures complainants claim that the defendants should, in equity, contribute towards liquidating, before partition be made, or that the portion of the said real estate, on which said improvements were made, should be set apart to complainants, without account for the enhanced value thereof, but which equitable contribution the said defendants refused to make, and, instead of so doing, have presented their petition, on the common law side of the court, praying a legal partition of the said real estate, without any regard to the equities of complainants therein.
- 8.

- The complainants prayed that a commission of partition be issued out of chancery, to assign the dower of the said Margaret Reed, widow, in the said lands, and to make an equitable partition thereof, among the complainants and the other parties in interest, and that the complainant, Stephen, be allowed what was right for his expenditures as aforesaid, or that there might be allotted him and his said wife, for their share of said estate, that portion of the lands, of the said Reed, deceased, on which said improvements were made, and that the said Joseph and Rebecca Bowles, and Andrew and Mary Ann McCallen, and Mary, Josephine and Andrew J. McCallen, might be made defendants' guardians AD LITEM, appointed for said infants, and that
- 10.
11. an injunction issue, restraining said defendants from proceeding at law with said suit for partition.

Which is the substance of the bill of complainants, which was sworn to by complainant, Stephen R. Rowan, as required by law, and the defendants called upon to answer the bill without oath.

13. At the same term of court, separate answers were filed by Joseph Bowles and wife, and Andrew McCallen and wife—the answer of the said McCallen and wife being, in effect, on behalf of the minors as well as himself and wife, but no answer appears to have been filed, in form, for, or on behalf of the minor children of said Andrew and wife.
- 14–15. The answer of Bowles and wife deny all the equities of complainants,
- 16–17. but admit that they have filed their petition for partition at law, and insist
18. upon it, as a defense to the relief sought for, that complainants enjoyed the profits of the home farm, and occupied the brick house, which, they aver, more than compensated complainants for any outlay by complainant, Stephen—also deny that said improvements were made by their consent, &c., or that they knew of said improvements, and also allege that the defendants, Mary, Josephine and Andrew J. McCallen, were minors, and could not consent.
- 19 to 23. The answers of McCallen and wife were to the same effect—to which answers a general replication was filed.
25. The defendants gave complainants notice that they would present their answers, denying the allegations in complainants' bill, together with affidavits, and filed the affidavits of the following persons, viz:
27. AARON R. STOUT,
29. JAMES BEASLEY, and
34. ALEXANDER KIRKPATRICK,

Page.

35. the complainants having, also, in support of their bill, filed the affidavits of the following named persons, viz:
36. HENRY GILL,
39. H. H. THOMASSON, and
MARGARET REED,
44. and, at the October Term, A. D., 1855, of the Circuit Court of Gallatin County, the complainants moved for an injunction, as prayed for in their bill, and, at a court, held on the 1st November, 1856, the said Circuit Court, after the cause being submitted on bill, answers, replication, and the affidavits on file, on behalf of complainants and defendants, the court overruled the motion and dismissed the bill at complainants' cost.

Whereupon the complainants appealed to this court, which appeal was allowed, by consent of parties, without giving bond, the cause to stand for a hearing at the ensuing term of the Supreme Court, to be held in November, 1856, at Mt. Vernon, the same as though thirty days had intervened between the time of making said appeal and the sitting of said Supreme Court.

The said affidavits, also, by agreement, were to be considered as depositions.

Reversal of decree to operate as an injunction, according to prayer of bill.

Proceedings at law to be stayed until the further order of the court therein.

47. And now the complainants seek to reverse the decree of the Circuit Court of Gallatin County, for the following errors assigned upon the record:
- 48.

1st, That the court erred in overruling complainants' motion for an injunction.

2nd, Because the court erred in dismissing complainants' bill, at their cost, and

3rd, Because the court erred in overruling said motion for an injunction, dismissing said bill, and in not granting the relief prayed for.

NELSON & JOHNSON, for
Appellants.

.....
J. W. EDWARDS, PRINTER, SHAWNEETOWN.
.....

14. M. H. THOMAS, DECEASED, PLAINTIFF,

vs.

NELSON & JOHNSON, 1st.

1st. Dismissing said bill, and in not granting the relief prayed for.
2nd. Because the court erred in overruling said motion for an injunction, cost, and

3rd. Because the court erred in dismissing complainant's bill, at their injunction.

1st. That the court erred in overruling complainant's motion for an

18. Court of Chancery County, for the following errors assigned upon the record:

19. And now the complainants seek to reverse the decree of the Circuit Court therein.

Proceedings at law to be stayed until the further order of the

Reversal of decree to operate as an injunction, according to prayer of bill depositions.

The said affidavits, also, by agreement, were to be considered as Supreme Court.

intervened before the time of the said hearing and before the filing of said bill, to wit: on the 1st day of November, 1888, at the Court of the said Circuit Court, for the purpose of obtaining an injunction, and the said Court, in its order, allowed, by consent of parties, a continuance of said cause to stand until the 1st day of December, 1888.

Whereupon the complainants appeared at the said Court, which appears upon the minutes and dismissed the bill at complainant's cost.

affidavits on the part of complainant and defendant, the court overruled the said motion for an injunction, and the said Court, after the same being submitted on bill, answers, replication and the bill, and at a Court held on the 1st day of December, 1888, the said Circuit Court, the said Court, in its order, allowed, by consent of parties, a continuance of said cause to stand until the 1st day of January, 1889.

and, at the October Term, A. D. 1888, of the Circuit Court of Chancery County, the said Court, in its order, allowed, by consent of parties, a continuance of said cause to stand until the 1st day of November, 1888.

MINUTES HERE,

38. H. H. THOMAS, and

39. HEZEY GILL,

the following named persons, viz:

the complainants praying, also, in support of their bill, filed the affidavits of

Page

Rowan et al

Bowles et al

in

32

2120

Easton

No 53

Nov 1859

Nowan
my

Bowler & wife -

Motion to Petar

Costs -

Papers

No 52 -

Nov Term 1859 -

Bowler & wife

my

Nowan

Motion to Petar

Costs -

Drum

Nov 1859

Nowan

Papers & Opinion on
Motion to Petar. &
Costs taken out and
sent to Reporter Rich
July 16 1861

8520